Explanatory Notes Relating to the Air Travellers Security Charge, Tobacco Tax, Fuel Excise Tax, GST and HST, First Nations Goods and Services Tax, Income Tax and Other Related Measures

Published by
The Honourable John Manley, P.C., M.P.
Deputy Prime Minister and Minister of Finance

March 2003

Canada

Explanatory Notes Relating to the Air Travellers Security Charge, Tobacco Tax, Fuel Excise Tax, GST and HST, First Nations Goods and Services Tax, Income Tax and Other Related Measures

Published by
The Honourable John Manley, P.C., M.P.
Deputy Prime Minister and Minister of Finance

March 2003

Department of Finance Canada
Ministère des Finances Canada

Available from the

Distribution Centre
Department of Finance Canada
Room P-135, West Tower
300 Laurier Avenue West
Ottawa, Ontario K1A 0G5
Tel: (613) 943-8665
Fax: (613) 996-0901

Price : $15.00 including GST

This document is available free on the Internet at www.fin.gc.ca

Cette publication est également disponible en français.

Cat No.: F2-97/2-2003E
ISBN 0-660-19018-4

PREFACE

These explanatory notes relate to legislation to implement certain provisions of the budget tabled in Parliament on February 18, 2003. Specifically, the amendments relate to the air travellers security charge, tobacco tax, fuel excise tax, the GST and HST, income tax and first nations goods and services taxes. As well, the legislation contains amendments to harmonize various accounting, interest, penalty and related administrative and enforcement provisions under the *Excise Act, 2001*, the *Excise Tax Act* and the *Income Tax Act*.

The explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament and Senators, as well as taxpayers and their professional advisors.

The Honourable John Manley, P.C., M.P.,
Deputy Prime Minister and Minister of Finance

These explanatory notes are provided to assist in an understanding of the proposed amendments to which they relate. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Air Travellers Security Charge

Clause 44

Amount of Charge if Service Acquired in Canada

Air Travellers Security Charge Act
12(1)(*a*) to (*e*)

Existing subsection 12(1) of the *Air Travellers Security Charge Act* sets out the amount of the charge that is payable on an air transportation service acquired in Canada. This includes air transportation services deemed under section 13 of the Act to have been acquired in Canada. For domestic and transborder travel, the amount of the charge is $12 (including the GST, or the federal component of the HST where applicable) per chargeable emplanement to a maximum of $24 per ticket. For travel from Canada to another international destination, the charge is $24.

The subsection is amended to reduce the charge for domestic air travel from $12 to $7 for one-way travel and from $24 to $14 for round-trip travel, applicable to air travel that includes a chargeable emplanement on or after March 1, 2003 and is purchased on or after that date. New paragraphs 12(1)(*a*) and (*b*) set out the new reduced amount of the charge for domestic travel. The new paragraphs provide that the amount of the charge in respect of an air transportation service acquired in Canada that does not include transportation to a destination outside of Canada is:

> (*a*) $6.54 for each chargeable emplanement included in the service, to a maximum of $13.08, if tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST, or the federal component of the HST) is required to be paid in respect of the service; or
>
> (*b*) $7.00 for each chargeable emplanement included in the service, to a maximum of $14.00, if tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid in respect of the service.

The amount of the charge for transborder travel, which remains unchanged, is set out in new paragraphs 12(1)(*c*) and (*d*).

New paragraph 12(1)(*e*) sets out the amount of the charge for air travel from Canada to another international destination, which also remains unchanged.

Tobacco Tax

Clause 45

Duty on Tobacco Products Imported by a Traveller

Customs Tariff
21(2)

Subsection 21(2) of the *Customs Tariff* imposes a duty on manufactured tobacco products imported by returning Canadian residents that qualify for relief under the traveller's allowance or similar provisions. This duty is increased to:

- $0.075 per cigarette ($15 per carton);
- $0.055 per tobacco stick ($11 per 200 sticks); and
- $0.05 per gram for other manufactured tobacco products ($10 per 200 grams).

Clause 46

Contravention of Subsection 50(5)

Excise Act, 2001
240

Section 240 of the *Excise Act, 2001* imposes a penalty on a tobacco licensee who removes from the licensee's excise warehouse for export in a calendar year unstamped manufactured tobacco in excess of the 1.5% limit on exports established in subsection 50(5).

This penalty is increased to:

- $0.34995 per cigarette ($69.99 per carton);
- $0.199966 per tobacco stick ($39.99 per 200 sticks); and
- $199.966 per kilogram for other manufactured tobacco products ($39.99 per 200 grams).

Clause 47

Duty on Cigarettes

Excise Act, 2001
Schedule 1, section 1

Paragraph 1(*a*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced cigarettes that are delivered to a duty free shop, a bonded warehouse in Canada or for use as ships' stores. This duty is increased to $0.374875 per five cigarettes ($15 per carton).

Paragraph 1(*b*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported cigarettes for domestic sale, and on Canadian-produced cigarettes for export over a threshold of 1.5% of the manufacturer's production of this product in the preceding year. This duty is increased to $0.396255 per five cigarettes ($15.85 per carton).

Clause 48

Duty on Tobacco Sticks

Excise Act, 2001
Schedule 1, section 2

Paragraph 2(*a*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced tobacco sticks that are delivered to a duty free shop, a bonded warehouse in Canada or for use as ships' stores. This duty is increased to $0.054983 per tobacco stick. ($11 per 200 sticks).

Paragraph 2(*b*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported tobacco sticks for domestic sale, and on Canadian-produced tobacco sticks for export over a threshold of 1.5% of the manufacturer's production of this product in the preceding year. This duty is increased to $0.057983 per tobacco stick. ($11.60 per 200 sticks).

Clause 49

Duty on Other Manufactured Tobacco

Excise Act, 2001
Schedule 1, section 3

Paragraph 3(*a*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced manufactured tobacco, other than cigarettes and tobacco sticks, delivered to a duty free shop, a bonded warehouse in Canada or for use as ships' stores. This duty is increased to $49.983 per kilogram ($10 per 200 grams).

Paragraph 3(*b*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported manufactured tobacco, other than cigarettes and tobacco sticks, for domestic sale, and on Canadian-produced manufactured tobacco, other than cigarettes and tobacco sticks, for export over a threshold of 1.5% of the manufacturer's production of this product in the preceding year. This duty is increased to $53.981 per kilogram ($10.80 per 200 grams).

Clause 50

Additional Duty on Cigars

Excise Act, 2001
Schedule 2

Schedule 2 to the *Excise Act, 2001* sets out the rates of additional duty imposed under section 43 of the Act on cigars. This additional duty is the greater of the specific rate set out in paragraph (*a*) of Schedule 2 and the *ad valorem* rate set out in paragraph (*b*) of Schedule 2. The specific rate is increased to $0.065 per cigar. The *ad valorem* rate is increased to 65% of the sale price in the case of Canadian-manufactured cigars, and 65% of the duty paid value in the case of imported cigars.

Clause 51

Special Duty on Imported Manufactured Tobacco Delivered to Duty Free Shop

Excise Act, 2001
Schedule 3, section 1

Paragraphs 1(*a*) to (*c*) of Schedule 3 to the *Excise Act, 2001* set out the rates of special duty imposed under paragraph 53 of the Act on imported manufactured tobacco delivered to a duty free shop.

These rates are increased to:

- $0.075 per cigarette ($15 per carton);
- $0.055 per tobacco sticks ($11 per 200 sticks); and
- $0.05 per gram of other manufactured tobacco ($10 per 200 grams).

Clause 52

Special Duty on "Traveller's Tobacco"

Excise Act, 2001
Schedule 3, section 2

Paragraphs 2(*a*) to (*c*) of Schedule 3 to the *Excise Act, 2001* set out the rates of special duty imposed under section 54 of the Act on manufactured tobacco imported by returning Canadian residents.

These rates are increased to:

- $0.075 per cigarette ($15 per carton);
- $0.055 per tobacco sticks ($11 per 200 sticks); and
- $0.05 per gram of other manufactured tobacco ($10 per 200 grams).

Clause 53

Special Duty on Unstamped Tobacco Products for Export

Excise Act, 2001
Schedule 3, section 3

Paragraphs 3(*a*) to (*c*) of Schedule 3 to the *Excise Act, 2001* set out the rates of special duty imposed under section 56 of the Act on unstamped manufactured tobacco exported by the tobacco licensee who manufactured the products within the 1.5% threshold established in subsection 50(5) of the Act.

These rates are increased to:

- $0.075 per cigarette ($15 per carton);
- $0.055 per tobacco sticks ($11 per 200 sticks); and
- $50.00 per kilogram of other manufactured tobacco ($10 per 200 grams).

Clause 54

Special Duty on Stamped Tobacco Products for Export

Excise Act, 2001
Schedule 3, section 4

Paragraphs 4(*a*) to (*c*) of Schedule 3 to the *Excise Act, 2001* set out the rates of special duty imposed under section 56 on stamped Canadian-produced manufactured tobacco for export in quantities over the 1.5% threshold established in subsection 50(5) of the Act. These rates of special duty are in addition to the rates of duty imposed on stamped tobacco products for domestic sale or for export over the 1.5% threshold set out in Schedule 1 to the *Excise Act, 2001*.

These rates are increased to:

- $0.095724 per cigarette ($19.14 per carton);
- $0.042 per tobacco stick ($8.40 per 200 sticks); and
- $46.002 per kilogram of other manufactured tobacco ($9.20 per 200 grams).

Clause 55

Tax on Domestic Tobacco Delivered to a Duty Free Shop, Bonded Warehouse or as Ships' Stores

Excise Tax Act
23.11

Section 23.11 of the *Excise Tax Act* imposes an excise tax on Canadian-produced tobacco products that are delivered to a duty free shop, a bonded warehouse in Canada or for use as ships' stores. This tax is imposed in addition to the excise duty imposed on these products under the *Excise Act*.

The rates of excise tax are increased to:

- $0.0475 per cigarette ($9.50 per carton);
- $0.03665 per tobacco stick ($7.33 per 200 sticks); and
- $31.65 per kilogram for other manufactured tobacco products ($6.33 per 200 grams).

Clause 56

Tax on Imported Tobacco Products Delivered to a Duty Free Shop

Excise Tax Act
23.12

Section 23.12 of the *Excise Tax Act* imposes an excise tax on tobacco products that are imported and delivered to a duty free shop in Canada.

The rates of this excise tax are increased to:

- $0.075 per cigarette ($15 per carton);
- $0.055 per tobacco stick ($11 per 200 sticks); and
- $0.05 per gram for other manufactured tobacco products ($10 per 200 grams).

Clause 57

Tax on Exports of Tobacco Products

Excise Tax Act
23.13

Section 23.13 of the *Excise Tax Act* imposes excise tax on exports of Canadian tobacco products.

Subsection 23.13(1) imposes excise tax on exported tobacco products that do not exceed the annual quantity limit for in-bond exports established under the *Excise Act*. The rates of this excise tax are increased to:

- $0.075 per cigarette ($15 per carton);
- $0.055 per tobacco stick ($11 per 200 sticks); and
- $50.00 per kilogram for other manufactured tobacco products ($10 per 200 grams).

Subsection 23.13(2) imposes excise tax on exported tobacco products that exceed the annual quantity limit for in-bond exports established under the *Excise Act*. This tax is imposed in addition to the excise duty imposed on these products under the *Excise Act*. The rates of this excise tax are increased to:

- $0.1475 per cigarette ($29.50 per carton);
- $0.08165 per tobacco stick ($16.33 per 200 sticks); and
- $81.65 per kilogram of other manufactured tobacco products ($16.33 per 200 grams).

Clause 58

Excise Tax Rates for Tobacco Products

Excise Tax Act
Schedule II, sections 1 to 4

Sections 1 to 4 of Schedule II to the *Excise Tax Act* set out the rates of federal excise tax imposed under section 23 of the Act on cigarettes, tobacco sticks and other manufactured tobacco products imported into Canada or produced in Canada for domestic consumption.

The rates are increased to:

- $0.25888 per 5 cigarettes ($10.35 per carton);
- $0.03965 per tobacco stick ($7.93 per 200);
- $35.648 per kilogram for other manufactured tobacco products ($7.13 per 200 grams); and
- the greater of $0.065 per cigar and 65 per cent, for cigars.

Clause 59

Application of Interest

This clause provides that, for the purposes of applying the provisions of the *Customs Act* and the *Excise Tax Act* that provide for the payment of, or liability to pay, interest in respect of any amount, such as an amount of excise tax owing, that amount is to be determined, and interest is to be computed on it, as if the provisions of the *Budget Implementation Act, 2003* that implement tobacco tax increases were assented to on June 18, 2002.

Clause 60

Coming-into-Force Rules

These coming-into-force rules relate to the amendments in the *Budget Implementation Act, 2003* to existing provisions of the *Customs Tariff* and the *Excise Tax Act* that are to be repealed and replaced by provisions of the new *Excise Act, 2001* when it is implemented. These coming-into-force rules ensure that the amendments to the existing provisions apply from the effective date of June 18, 2002 until the day on which the related provisions of the *Excise Act, 2001* come into force.

As well, a coming-into-force rule is provided to ensure that when the *Excise Act, 2001* is implemented, it will impose tax at the new rates set out in the amendments in the *Budget Implementation Act, 2003*.

Fuel Excise Tax and GST and HST

Clause 61

Where Excise Tax Not Payable on Diesel-alcohol

ETA
23.4(3)

Existing section 23.4 of the *Excise Tax Act* provides relief from the excise tax on gasoline for the ethanol or methanol portion of blended gasoline-alcohol fuels. The exemption applies to ethanol and methanol (i.e., alcohol) produced from biomass or renewable feedstock, but does not apply to ethanol or methanol produced from petroleum, natural gas or coal.

New subsection 23.4(3) provides relief from the excise tax on diesel fuel for the ethanol or methanol portion of blended diesel-alcohol fuel. Where ethanol or methanol, produced from biomass or renewable feedstocks, is blended with diesel fuel, the 4-cent per litre federal excise tax on diesel fuel is not payable on the ethanol or methanol portion of the blended diesel fuel. This amendment comes into force on February 19, 2003.

Clause 62

Exemption for Bio-diesel Fuel

ETA
23.5

New section 23.5 provides relief from the excise tax on diesel fuel for bio-diesel fuel. "Bio-diesel fuel" is defined as a diesel fuel that is produced from waste material, or feedstocks, of a biological origin and not from petroleum, natural gas or coal. New subsection 23.5(2) exempts bio-diesel fuel from the 4-cent per litre excise tax on diesel fuel. New subsection 23.5(3) provides relief from the excise tax for the bio-diesel fuel portion of a blended diesel-bio-diesel fuel. Where bio-diesel fuel is blended with diesel fuel, the 4-cent per litre federal excise tax on diesel fuel is not payable on the bio-diesel fuel portion of the blended diesel fuel. These amendments come into force on February 19, 2003.

Clause 63

Payment Where Goods Exported

ETA
68.1(3)

Existing section 68.1 provides a rebate of excise taxes paid on goods that are exported from Canada. With respect to fuel taken out of the country in the fuel tank of a vehicle being driven across the border, the government's longstanding position has been that the fuel does not qualify as an export and no rebate of the excise tax paid on the fuel is available. Similarly, the government has not considered fuel in the tank of a vehicle being driven into Canada to be imported and has not required tax to be paid on the fuel. This approach simplifies tax accounting and reporting for both taxpayers and the government and avoids difficulties at border crossings.

A recent court decision ruled that fuel in the fuel tank of a vehicle leaving Canada was exported and that the person who exported the fuel was entitled to recover the excise tax paid under the existing section 68.1.

New subsection 68.1(3) provides that no amount is payable to a person in respect of excise tax paid on fuel transported out of Canada in the fuel tank of the vehicle that is used for that transportation. The amendment responds to the court decision by clarifying that excise tax is not recoverable on fuel in the fuel tank of a vehicle being driven across the border.

The amendment applies to rebate applications received by the Minister of National Revenue after February 17, 2003.

Clause 64

School Transportation Services

ETA
Schedule, V, Part III, section 5

Section 5 of Part III of Schedule V to the *Excise Tax Act* (Educational Services) exempts from the goods and services tax/harmonized sales tax (GST/HST) a supply by a school authority of a service of transporting elementary or secondary school students to or from a school operated by a school authority. Under the existing provision, the exemption applies only where the supply is made to the student (i.e., the student is the recipient of the supply within the meaning of the Act).

This provision is intended to ensure that students are not required to pay tax on school bus services, should the school authority charge the students any fee for the services, and that the activity of the school authority of supplying the services to students is treated as part of the exempt activities of the school authority.

In most cases, school authorities are to some extent funded by their provincial or territorial governments. It was not intended that the exempt status of school transportation services be dependant on the particular government funding arrangements in place for school authorities. However, the Federal Court of Appeal has found that, under a certain provincial funding arrangement, the legal recipient of the student transportation service supplied by a school authority was the Province and not the student, and hence the exemption criterion was not satisfied in that case.

Consistent with the policy intention and manner in which section 5 has been administered since the introduction of the GST, the section is amended to ensure that a school authority's supply of student transportation services is exempt regardless of how it may be funded, retroactive to the date of enactment of the provision on December 17, 1990. Specifically, the section is amended to refer to supplies made to any person other than another school authority.

The section continues to not exempt supplies from one school authority to another. Accordingly, any school authority that supplies

the service on a taxable basis to another school authority can continue to recover tax paid on its related inputs by way of the input tax credit mechanism, while the purchasing school authority that re-supplies the services to students on an exempt basis may claim the public sector body rebate in respect of any tax it is required to pay to the other school authority.

The legislation also provides a specific authority for the Minister of National Revenue to reassess the net tax of a school authority, or the amount of an overpayment of a net tax refund of a school authority, for a particular reporting period that had previously been assessed by the Minister. This reassessment authority is consistent with the government's announcement on December 21, 2001 of the proposal to apply the amendment to section 5 retroactively to all cases except those that had been decided by the Federal Court of Appeal prior to that date. Accordingly, the Minister may make the reassessment whether or not the usual limitation period under the Act for making the reassessment has expired and despite any court decision that, subsequent to the government's announcement, may have been rendered in respect of that net tax of the school authority for the period.

A reassessment made under this provision can only take into account any difference in net tax that results from the application of the amendment to section 5. The limitation period for making such a reassessment is extended by one year from the day the legislation is given Royal Assent, if that limitation period would otherwise have expired sooner.

Clause 65

Municipal Services

ETA
Schedule V, Part VI, section 21

Section 21 of Part VI of Schedule V to the *Excise Tax Act* (Public Sector Bodies) exempts from the GST/HST certain municipal services supplied by or on behalf of a municipality or government (here referred to as the "municipal authority") to property owners or occupants (i.e., municipal residents) in a particular geographic area.

These are services that the owners or occupants have no option but to receive or that are supplied because of a violation of a law, such as a municipal resident's failure to comply with a weed control bylaw. This exemption does not apply to certain testing or inspection services that are specifically excluded under the provision.

Section 21 is restructured for greater clarity to refer in separate subparagraphs to the two different types of supplies that are dealt with under the section – one made by a municipal authority and the other made by another person, such as a private sector contractor, "on behalf of" a municipal authority. Under the restructured section, subparagraph 21(*a*)(i) refers to the first type of supply, which is made by the municipal authority, where the recipient of that supply is the municipal resident.

In the vast majority of cases, municipal authorities raise revenues to fund the provision of the types of municipal services covered by section 21 through the general property tax or other taxes that do not constitute consideration. Such services are rarely made by municipal authorities for consideration charged to their residents who receive the services. Therefore, in most cases, section 21 need not be relied upon to achieve exempt status for the supplies made by municipal authorities of the type of services covered by the section. That is because, even without reference to section 21, the provision of such services by the municipal authority for no consideration would be part of the authority's exempt activities by virtue of the general exemption under the Schedule for supplies made for no consideration. However, section 21 ensures that, should the municipal authority choose to charge consideration (e.g., in the form of a specific user fee) to a municipal resident for a municipal service covered by the provision, that supply remains part of the exempt activities of the municipal authority and the resident is not required to pay any GST/HST on the consideration.

Under restructured section 21, the second type of supply dealt with under the section, namely a supply of a municipal service made by a person other than the municipal authority, is referred to in subparagraph (*a*)(ii). This addresses a situation where a person, such as a private sector company, acts as the legal supplier in delivering the service to municipal residents, but does so "on behalf of" the municipal authority in the sense that the provision of the service would otherwise fall within the mandate of the municipal authority to

ensure that residents of its jurisdiction have access to that service. The reference to the service being supplied "on behalf of" the municipal authority thus qualifies the nature of the service covered by the provision.

As under subparagraph (*a*)(i), the only supply that is included under subparagraph (*a*)(ii) is one where the recipient of that supply is the municipal resident. In other words, if a supplier such as a private sector company charges any consideration to the municipal residents that receive the service, section 21 ensures that the supply to each resident is exempt and therefore the resident is not required to pay any GST/HST on the consideration. However, the supply of the private company's services is not covered by the exemption if the company charges the municipal authority consideration for those services since, in that case, the services are supplied to the municipal authority (i.e., the municipal authority is the legal recipient of the supply) instead of the municipal residents. Charges by private companies to municipal authorities for municipal services are intended to be subject to the GST/HST in the same manner as are charges for most other goods and services acquired by municipal authorities for use in carrying out their municipal functions.

The restructuring of section 21 and explicit references to the recipients of the respective supplies are intended only to add greater clarity to the section, given that it already applies only to those supplies that are made by or on behalf of a municipality or government to owners and occupants. Accordingly, these changes are made retroactive to the date of the section's first enactment on December 17, 1990. However, the amended section is read without reference to subparagraph (*b*)(ii) in the case of supplies for which all of the consideration became due or was paid before April 24, 1996 in order to preserve the coming-into-force rule for that particular part of the provision, which was added by c. 10, S.C., 1997.

Clause 66

Consequential Amendment to *Excise Act, 2001*

This clause concerns section 68.1 of the *Excise Tax Act*, which is being amended by both the *Budget Implementation Act, 2003* and the *Excise Act, 2001*. The *Excise Act, 2001* was enacted in 2002 but is not to come into force until a day to be fixed by order of the Governor in Council. This clause ensures that, whichever Act comes into force first, section 68.1 of the *Excise Tax Act* will be amended in the manner and as of the effective date provided for by the *Budget Implementation Act, 2003*.

First Nations Goods and Services Tax

Clause 67

First Nations Goods and Services Tax

This clause enacts the *First Nations Goods and Services Tax* Act, which provides for the imposition by eligible first nations of a first nations goods and services tax (FNGST) on first nation lands. An FNGST enacted by a first nation would be payable by both aboriginals and non-aboriginals and would apply in the same manner, and at the same rate, as the 7-per-cent goods and services tax (GST) or the federal component of the harmonized sales tax (HST), which is imposed under Part IX of the *Excise Tax Act*. A first nation may enact a law that imposes an FNGST either under the authority granted by the *First Nations Goods and Services Tax Act* or under a power to enact a law that has been recognized or granted under another Act of Parliament or under an agreement that has been given effect by another Act of Parliament.

The *First Nations Goods and Services Tax Act* provides authority for the Minister of Finance to enter into an administration agreement on behalf of the Government of Canada with the authorized body of a first nation respecting the collection and administration of an FNGST imposed under a law enacted by a first nation and for the estimation and sharing of tax revenues between the Government of Canada and the first nation.

A key feature of the *First Nations Goods and Services Tax Act* is that it provides for the seamless operation of the GST/HST and an FNGST imposed by a first nation. The FNGST of a first nation would apply to the supply of goods and services on the lands of the first nation in a manner identical to the manner in which the 7-per-cent GST, or federal component of the HST, applies to goods and services off those lands and in a manner that is seamless for those who pay, collect or administer the taxes. This enactment also prevents double taxation by providing that the 7-per-cent GST, or the federal component of the HST, does not apply to a supply if the FNGST applies to that supply.

The seamless nature of the FNGST system and the GST/HST system means that vendors will not be required to keep track of whether it is the FNGST or the 7-per-cent GST, or federal component of the HST,

that applies to any given taxable transaction. The rules of application of the taxes, and the rights and obligations of vendors, are identical under both systems. The same administration and enforcement mechanisms employed by the Canada Customs and Revenue Agency in respect of transactions to which the GST/HST currently applies will be employed for purposes of the FNGST. The reporting or claiming of amounts, whether in respect of the FNGST or the GST/HST, will be done on the same forms or returns and, where both types of taxes are involved, these amounts will be aggregated.

The only new obligation that the introduction of an FNGST by a first nation imposes on vendors is the obligation to collect FNGST on certain supplies made on the lands of the first nation that, in the absence of that tax, would otherwise have been exempt from the 7-per-cent GST, or the federal component of the HST, under section 87 of the *Indian Act* or under a similar exemption under another Act of Parliament. In those cases, the FNGST would be calculated in the same manner as if the transaction had been subject to the 7-per-cent GST or the federal component of the HST.

Section 1 – Short Title

This section provides that the short title to the enactment to which these notes relate is the *First Nations Goods and Services Tax Act.*

Section 2 – Interpretation

Subsection 2(1) sets out definitions that apply for the purposes of the *First Nations Goods and Services Tax Act.*

"administration agreement"

Under the *First Nations Goods and Services Tax Act,* the Minister of Finance may, with the approval of the Governor in Council, enter into an administration agreement on behalf of the Government of Canada with the authorized body of a first nation listed in the schedule to that Act. Under the administration agreement, the Government of Canada, through the Canada Customs and Revenue Agency, collects, administers and enforces the first nation's FNGST law. The administration agreement also provides for the estimation

and sharing of tax revenues between the Government of Canada and the first nation.

“authorized body”

The “authorized body” of a first nation is a body that is authorized to enter into an administration agreement in respect of an FNGST law with the Minister of Finance acting on behalf of the Government of Canada. The authorized body could be distinct from the governing body of the first nation that is empowered to enact the first nation's FNGST law.

“band”

The term “band” has the same meaning in the *First Nations Goods and Services Tax Act* as in the *Indian Act*. A band would rely on the authority under subsection 4(1) of the *First Nations Goods and Services Tax Act* to enact a law imposing an FNGST.

“governing body”

The “governing body” of a first nation is the body that has the authority to enact a law imposing an FNGST. The governing body of a band would be the council of the band. Governing bodies can take different forms for other first nations that are not bands. The schedule to the *First Nations Goods and Services Tax Act* identifies the governing body of each first nation listed in the schedule.

“imported taxable supply”

The term “imported taxable supply” has the same meaning as in section 217 of the *Excise Tax Act* relating to the goods and services tax and harmonized sales tax (GST/HST).

Under section 217 of the *Excise Tax Act*, the term “imported taxable supply” includes supplies made outside Canada of intangible personal property and services. Such supplies also include certain supplies of tangible personal property by unregistered non-resident persons where the supply is deemed to be made outside Canada but the property is delivered or possession of it is transferred in Canada. Under Division IV of Part IX of the *Excise Tax Act*, the recipient of an imported

taxable supply must self-assess tax calculated on the consideration for the supply.

Paragraph 4(1)(*c*) of the *First Nations Goods and Services Tax Act* provides that an FNGST may be imposed in respect of imported taxable supplies if, according to the rules set out in subsection 4(4), the supplies are made on the lands of the first nation that imposes the FNGST.

"input tax credit"

The term "input tax credit" has the same meaning as in Part IX of the *Excise Tax Act* for purposes of the GST/HST. Registrants under the GST/HST and FNGST are able to claim a refundable credit or "input tax credit" for the GST/HST or FNGST paid or payable on inputs, to the extent that they are acquired for use in commercial activities engaged in with the view to producing taxable supplies for consideration (including zero-rated supplies).

The term "input tax credit" is relevant for the purposes of clause 5(1)(*a*)(ii)(A) in the determination of "tax attributable to the first nation" under subsection 5(1).

"lands"

The lands of a first nation comprise the area where an FNGST law of that first nation applies or would apply once the FNGST law came into force. Normally, the lands of a band are the reserves that have been set aside for that band. The lands of other first nations that are not bands could be reserves or they could be other lands. To avoid uncertainty, the schedule to the *First Nations Goods and Services Tax Act* describes the lands of each first nation listed in the schedule.

"Minister"

In the *First Nations Goods and Services Tax Act*, the term "Minister" means the Minister of Finance. Under that enactment, the Minister of Finance is authorized to enter into an administration agreement on behalf of the Government of Canada with a first nation that has enacted a law imposing an FNGST and that is listed in the schedule to that enactment.

"net tax"

The term "net tax" has the same meaning as in Part IX of the *Excise Tax Act* for purposes of the GST/HST. The "net tax" of a person for a reporting period is the total of all amounts of tax collected or collectible by the person in the period less the total of all input tax credits and other deductions from net tax that the person claims in respect of the period. The net tax is therefore an amount that the person is liable to remit for the period, if it is a positive amount, or that the person is entitled to claim as a net tax refund, if it is a negative amount. For purposes of determining net tax, amounts of GST/HST and FNGST will be aggregated. There is no need for persons to determine separate amounts of net tax in respect of the two taxes.

"Part IX of the *Excise Tax Act*"

A reference to "Part IX of the *Excise Tax Act*" includes a reference to Schedules V to X to that Act. Schedules I to IV to the *Excise Tax Act* are not relevant for the purposes of the GST/HST or an FNGST. It should be noted that a reference to Part IX of the *Excise Tax Act* also includes a reference to the regulations made under that Part, without it having to be so provided.

"reserve"

In the *First Nations Goods and Services Tax Act*, the term "reserve" has the meaning assigned by the *Indian Act*.

Subsection 2(2) – Expressions Defined in s. 123(1) of the *Excise Tax Act*

Subsection 2(2) provides that, unless a contrary intention appears, words and expressions used in the *First Nations Goods and Services Tax Act* have the same meaning as they have in subsection 123(1) of the *Excise Tax Act*. That subsection sets out definitions that apply in Part IX of the *Excise Tax Act*, the Part governing the GST/HST.

Subsection 2(3) – Mobile Home or Floating Home

For the purposes of the *First Nations Goods and Services Tax Act*, the term "real property" has the same meaning as is assigned to that term by subsection 123(1) of the *Excise Tax Act*, which provides that "real property" includes mobile homes and floating homes. However, to ensure that the authority given to a first nation to impose an FNGST in respect of the bringing of tangible personal property onto its lands applies in respect of mobile homes and floating homes, subsection 2(3) provides that a mobile home or floating home is deemed to be tangible personal property for the purposes of applying the provisions of the *First Nations Goods and Services Tax Act*, and a first nation law that imposes an FNGST, in respect of the bringing of property onto the lands of a first nation.

Subsection 2(4) – Application of Deeming Rules

Part IX of the *Excise Tax Act* contains a number of deeming rules that deem various circumstances to exist that have consequences for the application of the GST/HST, including deeming taxable transactions to have occurred in some cases. Subsection 2(4) of the *First Nations Goods and Services Tax Act* ensures that an FNGST applies in the same manner as GST/HST by providing that, if Part IX deems certain facts or circumstances to exist, the same deeming applies when determining the matters in respect of which a first nation law can impose an FNGST.

Subsection 3(1) – Section 87 of *Indian Act* and Similar Provisions

Section 87 of the *Indian Act* provides a tax exemption in respect of property of an Indian situated on a reserve. Generally, under that exemption, the sale to an Indian of property that is delivered to them on a reserve would not be subject to the GST/HST. Other federal Acts also provide tax exemptions similar to the exemption under section 87 of the *Indian Act*, such as the *Cree-Naskapi (of Quebec) Act*.

Subsection 3(1) of the *First Nations Goods and Services Tax Act* provides that, if a first nation listed in the schedule to that Act enacts a law imposing an FNGST within its lands, the obligation to pay that tax or any other amount required to be paid under the FNGST law applies despite the exemption under section 87 of the *Indian Act* or any similar exemption.

Subsection 3(2) – Subsection 4(1) Applies Despite Any Other Act of Parliament

Some first nations that are not bands have existing tax powers that are granted or recognized under other federal legislation or under agreements that have been given effect by other federal legislation. However, in some cases, those tax powers are limited to certain types of taxes. Under the *Cree-Naskapi (of Quebec) Act*, for example, the self-governing Cree and Naskapi first nations of Quebec have the power to impose property taxes but do not have a power to enact a law imposing an FNGST. Subsection 3(2) clarifies that, even where other federal legislation provides a limitation on the tax powers of a first nation, the first nation may, if it is listed in the schedule to the *First Nations Goods and Services Tax Act*, enact an FNGST law under the authority of subsection 4(1) of that enactment.

Subsection 3(3) – Binding on Her Majesty

Subsection 3(3) provides that, if a provision of Part IX of the *Excise Tax Act* is binding on Her Majesty in right of Canada or in right of a province, to the extent that the same provision applies for the purposes of a first nation FNGST law, that provision and any provision of the first nation law that corresponds to it are also binding on Her Majesty in right of Canada or a province for the purposes of the first nation FNGST law. Accordingly, for example, a province would be subject to a garnishee order in respect of the FNGST in the same fashion that it is subject to a garnishee order in respect of GST/HST.

Section 4 – First Nations Goods and Services Tax Law

The governing body of a first nation listed in the schedule to the *First Nations Goods and Services Tax Act* may, under section 4 of that Act, enact a law that imposes a 7-per-cent FNGST. Section 4 also delineates the circumstances under which tax can be imposed under that law and provides for the amount of tax that can be imposed.

Subsection 4(1) – Authority to Impose Tax

Under subsection 4(1), the governing body of an eligible first nation may enact a law that imposes a tax in respect of the matters described in paragraphs 4(1)(*a*) to (*c*). To be eligible to enact a law under subsection 4(1), a first nation must either be a band or have a pre-existing power to enact laws that is recognized or granted under another Act of Parliament or under an agreement that has been given effect by another Act of Parliament. The pre-existing law-making power need not be a tax-law-making-power. It can be a power to enact any type of law. In the case where the pre-existing power of a first nation includes the power to enact a law that imposes a value-added tax, that first nation has the choice to use that power, or the authority under section 4 of the *First Nations Goods and Services Tax Act*, to impose an FNGST.

Tax referred to in paragraph 4(1)(*a*) in respect of a taxable supply may be imposed under the law of a first nation only if that taxable supply is made on the lands of that first nation. Subsections 4(2) and (3) set out rules for determining when a supply is made on the lands of a particular first nation. Subsection 4(10) applies for the purpose of determining the amount of tax that may be imposed under a first nation law in respect of a taxable supply that is made on the lands of a first nation.

Paragraph 4(1)(*b*) provides for the imposition of FNGST in respect of the bringing of tangible personal property onto the lands of a first nation from a place in Canada. Subsections 4(5) and (6) have the effect of limiting the circumstances under which this tax may be imposed. Subsection 4(8) sets out rules for determining the amount of tax that may be imposed under a first nation law in respect of the bringing of tangible personal property onto the lands of the first

nation and subsection 4(9) provides rules relating to the reporting and payment of that tax by the person who brings the property onto the lands.

Paragraph 4(1)(*c*) provides for the imposition of FNGST in respect of imported taxable supplies of property and services, as defined by section 217 of the *Excise Tax Act*.

Section 13 of the *First Nations Goods and Services Tax Act* has the effect of ensuring that GST/HST and FNGST do not both apply in respect of a particular taxable supply, including an imported taxable supply, by providing that neither the 7-per-cent GST nor the 7-per-cent component of the HST are payable in respect of a particular taxable supply if FNGST is payable in respect of that supply. A comparable rule is not necessary in respect of the bringing of tangible personal property onto the lands of a first nation because that is not a circumstance in respect of which either the 7-per-cent GST or the federal component of the HST is imposed.

Subsection 4(2) – Supply Made on the Lands of a First Nation

The authority given to a first nation to enact a law that imposes a tax referred to in paragraph 4(1)(*a*) applies in respect of taxable supplies, other than imported taxable supplies, made on the lands of the first nation. Subsection 4(2) provides that a taxable supply, other than an imported taxable supply, is made on the lands of a first nation only if the rule in paragraph 4(2)(*a*) or (*b*) provides that the supply is made on those lands.

The rule in paragraph 4(2)(*a*) is adapted from the rules that apply for purposes of Part IX of the *Excise Tax Act* to determine whether a supply is made in a participating province. Paragraph 4(2)(*a*) provides that a supply is made on the lands of a first nation if, under the hypothetical circumstance that the lands of that first nation are a participating province, the supply would be made in that province for the purposes of Part IX of the *Excise Tax Act*. The following additional hypothetical circumstances apply for purposes of the determination of whether the supply is considered to be made on the lands of the first nation:

- the lands of every other first nation in respect of which a first nation law that imposes an FNGST is in force at the time the supply is made are each considered to be a separate participating province; and

- the actual participating provinces listed in Schedule VIII to the *Excise Tax Act* are considered to be non-participating provinces.

The following examples demonstrate the application of these rules to determine whether a supply is made on the lands of a first nation. Assume that a florist shop is situated in the Province of British Columbia on the lands of a first nation that imposes an FNGST. The shop makes two sales of flowers.

In the first sale, the buyer takes possession of the flowers at the store. If the lands of that first nation were themselves a participating province, that sale would be made in that province for the purposes of Part IX of the *Excise Tax Act* by reason of the application of section 1 of Part II of Schedule IX to that Act. That section provides that a supply of tangible personal property by way of sale is made in a province if the seller delivers the property or makes it available to the buyer in the province. The first sale would therefore be considered to be made on the lands of the first nation. The FNGST would apply in respect of that sale.

In the second sale, assume the vendor delivers the flowers to the buyer's home, which is situated off the lands of the first nation. If the lands of that first nation were a participating province, section 1 of Part II of Schedule IX would not deem the supply to be made in that province because delivery would be made outside that province. The FNGST would not apply to the sale. Tax would still be imposed at the rate of 7 per cent under Part IX of the *Excise Tax Act* in respect of the second sale.

The hypothetical circumstance that the lands of every other first nation that imposes an FNGST are each a separate participating province is needed to apply the place-of-supply rules in circumstances in which a transaction is connected to the lands of more than one such first nation. For example, if 60 per cent of an accounting service is performed on the lands of a first nation that imposes an FNGST but the contract for the service was negotiated, and the remainder of the service is performed, on the lands of another first nation that also

imposes an FNGST, the place-of-supply rule under section 2 of Part V of Schedule IX to the *Excise Tax Act* provides that the service is supplied where the contract was negotiated. However, if the place of negotiation is situated off both first nations' lands, the supply is considered to be made on the lands of the first nation where 60 per cent of the service is performed. If the place of negotiation is not on any lands of a first nation that imposes an FNGST, and the service is performed primarily off all such first nations' lands, the supply is not subject to any FNGST but is subject to the GST/HST instead.

Paragraph 4(2)(*b*) provides another rule for determining whether a supply is made on the lands of a particular first nation. This second rule ensures that the FNGST imposed under the law of a first nation applies to every taxable supply in respect of which, because of the connection of the supply with the lands of that first nation, section 87 of the *Indian Act,* or a similar exemption from taxation under another Act of Parliament, relieves the recipient of the supply from the obligation to pay GST. This may be considered a default rule because, in the vast majority of circumstances in which section 87 or a similar exemption would apply in respect of a supply because of the connection of the supply with the lands of a first nation, the rule in paragraph 4(2)(*a*) would deem the supply to be made on the lands of that first nation.

Subsection 4(3) – Supply of Specified Motor Vehicle on Lands

Subsection 4(3) provides two specific rules for determining whether certain supplies of motor vehicles by way of lease, licence or similar arrangement are made on the lands of a first nation. These rules apply for the purposes of paragraph 4(1)(*a*) despite the general rules in subsection 4(2) for determining whether a supply is made on the lands of a first nation.

Paragraph 4(3)(*a*) applies in the case of recipients who are individuals. It provides that a supply of a motor vehicle by way of lease, licence or similar arrangement under which continuous possession or use of the vehicle is provided for a period of more than three months is made on the lands of a first nation only if the individual resides on the lands of the first nation at the time the supply is made. For such supplies to recipients who are not

individuals, paragraph 4(3)(*b*) provides that the supply is made on the lands of a first nation if the ordinary location (determined for purposes of the *Excise Tax Act*) of the vehicle is on those lands.

It should be noted that subsection 136.1(1) of the *Excise Tax Act* deems there to be separate supplies for each of the separate lease intervals (i.e., each period to which a lease payment is attributable) under a lease. Therefore, the determination under paragraphs 4(3)(*a*) and (*b*) of whether a supply for a lease interval is made on the lands of a first nation will apply in respect of each of those separate supplies.

Subsection 4(4) – Imported Taxable Supply Made on Lands

The authority given to a first nation to enact a law that imposes a tax referred to in paragraph 4(1)(*c*) applies in respect of imported taxable supplies made on the lands of the first nation. Subsection 4(4) provides that an imported taxable supply is made on the lands of a first nation only if the rules in either of paragraphs 4(4)(*a*) or (*b*) provide that the supply is made on those lands.

To determine whether an imported taxable supply is made on the lands of a first nation, the rule in paragraph 4(4)(*a*) adapts the rules for determining whether an imported taxable supply is subject to the 8-per-cent component of the HST under the *Excise Tax Act*. Specifically, paragraph 4(4)(*a*) provides that an imported taxable supply is made on the lands of a first nation if the 8-per-cent component of the HST would be payable in respect of the supply under the hypothetical circumstances set out in subparagraphs 4(4)(*a*)(i) to (iv), which are the following:

- the lands of the first nation are the particular participating province referred to in subsection 218.1(1) of the *Excise Tax Act*;

- the lands of every other first nation in respect of which a first nation law that imposes an FNGST is in force at the time the imported taxable supply is made are each a separate participating province;

- the actual participating provinces listed in Schedule VIII to the *Excise Tax Act* are non-participating provinces; and

- the recipient of the imported taxable supply is not a selected listed financial institution.

The following example illustrates the application of these rules to determine whether an imported taxable supply is made on the lands of a first nation. Assume that a Canadian resident bank has a branch located on the lands of a first nation. The bank acquires a service outside Canada for use in carrying on exempt activities at the branch. The service falls within paragraph (*a*) of the definition "imported taxable supply" in section 217 of the *Excise Tax Act* and is therefore an imported taxable supply.

Under the hypothetical condition in subparagraph 4(4)(*a*)(i), the first nation would be considered to be the particular participating province referred to in subsection 218.1(1) of the *Excise Tax Act*. The bank would be considered to be resident in that province because it has a permanent establishment (the branch) located there. The hypothetical circumstance in subparagraph 4(4)(*a*)(iv) treats the bank as if it were not a selected listed financial institution, which is necessary because subsection 218.1(2) of the *Excise Tax Act* would normally relieve a selected listed financial institution, such as the bank, from the obligation to pay tax under subsection 218.1(1) of that Act given that other special rules apply for the purposes of determining a selected listed financial institution's liability in respect of the 8-per-cent component of the HST.

Under the hypothetical conditions in subparagraphs 4(4)(*a*)(i) to (iv), tax would be payable under subsection 218.1(1) of the *Excise Tax Act* in respect of the imported taxable supply. Therefore, the imported taxable supply would be considered to be made on the lands of the first nation.

Paragraph 4(4)(*b*) provides a second rule for determining whether an imported taxable supply is made on the lands of a first nation. This second rule ensures that the FNGST imposed under the law of a first nation applies to every imported taxable supply in respect of which, because of the connection of the supply with the lands of that first nation, section 87 of the *Indian Act*, or a similar exemption from taxation under another Act of Parliament, relieves the recipient of the supply from the obligation to pay GST.

Subsection 4(5) – Bringing of Property onto Lands

Subsection 4(5) sets out the conditions under which an FNGST is payable by a person on a self-assessment basis in respect of the bringing of tangible personal property by the person onto the lands of a first nation. The following conditions must be met for FNGST to apply in this circumstance:

- the person who brings the property onto the lands of the first nation must have last acquired the property by way of sale (i.e., the FNGST on bringing property onto the lands of a first nation would not apply to a lessee who brings leased goods onto first nation lands);
- the sale must have been made (i.e., the agreement for the sale must have been entered into) at a time when an administration agreement in respect of the first nation law imposing the FNGST was in effect;
- GST/HST was not payable in respect of the sale; and
- GST/HST would have been payable in respect of the sale but for the application of the exemption under section 87 of the *Indian Act* or of a similar exemption from taxation under any other Act of Parliament.

Given the last condition listed above, the requirement to self-assess FNGST in respect of the bringing of property onto the lands of a first nation applies only when the property was delivered to a reserve or first nation lands in circumstances in which the exemption under section 87 of the *Indian Act* or a similar exemption from taxation applied before the property is brought onto the first nation lands where the FNGST applies.

Subsection 4(6) – Exception

Subsection 4(6) sets out circumstances in which an FNGST shall not be imposed in respect of the bringing of property onto the lands of a first nation despite the fact that the conditions in subsection 4(5) may be met.

Specifically, to avoid the double taxation of the property, paragraph 4(6)(*a*) provides that FNGST shall not be imposed when the person who brings the property onto the lands of a first nation had previously become liable to pay

- GST under section 212 of the *Excise Tax Act* in respect of the importation of the property; or

- FNGST in respect of the bringing of the property onto the lands of that first nation or any other first nation.

Paragraph 4(6)(*b*) adapts, for FNGST purposes, the rules that relieve a person who brings property into a harmonized province from the obligation to pay the 8-per-cent component of the HST.

Paragraph 4(6)(*b*) provides that FNGST shall not be imposed in respect of the bringing of property onto the lands of a first nation if tax under subsection 220.05(1) of the *Excise Tax Act* would not be payable in respect thereof under the hypothetical circumstances set out in subparagraphs 4(6)(*b*)(i) to (iv), which are the following:

- the lands of the first nation are the particular participating province referred to in subsection 220.05(1) of the *Excise Tax Act*;

- the lands of every other first nation in respect of which a first nation law that imposes an FNGST is in force at the time of the bringing on of the property are each a separate participating province;

- the actual participating provinces listed in Schedule VIII to the *Excise Tax Act* are non-participating provinces; and

- certain exemptions from the tax under subsection 220.05(1) of the *Excise Tax Act* that are irrelevant for FNGST purposes, and the exemption under section 87 of the *Indian Act* and any similar exemption under any other federal Act, do not apply in respect of the bringing of the property onto the lands of the first nation.

Paragraph 4(6)(*b*) provides, for example, that FNGST shall not be imposed in respect of most property brought onto the lands of a first

nation by a registrant for use exclusively in commercial activities because that is a circumstance in which no tax would be imposed under subsection 220.05(1) of the *Excise Tax Act* if the lands of the first nation were a participating province.

Subsection 4(7) – Carriers

Subsection 4(7) ensures that the person who causes goods to be brought onto the lands of a first nation (i.e., normally the owner of the goods) is the person potentially liable for the FNGST in respect of that bringing on, rather than the person who physically transports the goods if that is a different person.

Subsection 4(8) – Amount of Tax in respect of Bringing Property onto Lands

Subsection 4(8) establishes the amount of FNGST that can be imposed in respect of the bringing of property onto the lands of a first nation.

Subsection 4(8) first deals with property that is brought onto the lands of a first nation not more than thirty days after the property was delivered to the purchaser. In this case, the amount of FNGST is equal to 7 per cent of the value on which the GST/HST would have been calculated in respect of that purchase if the exemption under section 87 of the *Indian Act,* or a similar exemption from taxation under any other Act of Parliament, had not applied to relieve the buyer from the obligation to pay that GST/HST.

In the case where the property was delivered to the purchaser more than thirty days prior to being brought onto the first nation lands, the FNGST is equal to the lesser of 7 per cent of that value on which the GST/HST would have been calculated on the sale of the property and the fair market value of the property at the time it is brought onto the first nation lands.

For example, assume that an individual purchases an automobile for $20,000 and is exempted under section 87 of the *Indian Act* from the obligation to pay the $1,400 of GST that would otherwise have applied in respect of the sale. Six months later, the individual brings the automobile onto the lands of a first nation that imposes an

FNGST and, at that time, the fair market value of the automobile is $15,000. The amount of FNGST in respect of the bringing of the automobile onto the lands of the first nation is equal to 7 per cent of $15,000.

Subsection 4(9) – Reporting and Payment of Tax

Subsection 4(9) provides that the FNGST payable by a person who brings tangible personal property onto the lands of a first nation becomes payable by the person at the time the property is brought onto those lands.

Paragraph 4(9)(*a*) applies if the person who brings property onto the lands is a registrant who acquired the property for consumption, use or supply primarily in commercial activities of the person. In this case, the person must report the FNGST in the person's return in respect of net tax for the reporting period in which the property is brought onto the lands. The person is also required to pay the FNGST to the Receiver General on or before the due date for filing that return.

Paragraph 4(9)(*b*) applies where the person bringing the property onto first nation lands is either not a registrant or is not bringing the property onto those lands for consumption, use or supply primarily in commercial activities of the person. In those cases, the person who brings the property onto the first nation lands must pay the applicable FNGST to the Receiver General on or before the end of the month following the month in which the property is brought onto the lands. The person must also file a return in respect of that FNGST with the Minister of National Revenue in the manner authorized by that Minister. That return must also be in the form authorized by, and contain information specified by, that Minister.

Subsection 4(10) – Amount of Tax in respect of Supply Made on Lands

Subsection 4(10) establishes the amount of FNGST that may be imposed in respect of taxable supplies referred to in paragraph 4(1)(*a*) and imported taxable supplies referred to in paragraph 4(1)(*c*). The effect of subsection 4(10) is to require that a first nation law impose an amount of FNGST in respect of a taxable supply or an imported taxable supply equal to the amount of tax that would be imposed

under Part IX of the *Excise Tax Act* in respect of the same supply if that Part applied in respect of the supply and if the first nation law and the exemption under section 87 of the *Indian Act*, or any similar exemption under any other Act of Parliament, did not apply.

For this purpose, pursuant to paragraphs 4(10)(*b*) and (*c*), the determination of the amount of tax that would apply under Part IX of the *Excise Tax Act* is made without reference to the provisions of that Part that impose the 8-per-cent component of the HST.

Subsection 4(11) – Administration and Enforcement

Subsection 4(11) requires an FNGST law made by a first nation under subsection 4(1) to be administered and enforced, and the FNGST imposed under that law to be collected, in accordance with an administration agreement entered into under subsection 11(2) by the authorized body of that first nation.

Section 5 – Administration Agreement

Section 5 provides for administration agreements between the Government of Canada and the authorized body of a first nation governing the collection of FNGST imposed under the law of the first nation, the administration and enforcement of that law and the estimation and sharing of tax revenues between the first nation and the Government of Canada.

Subsection 5(1) – Tax Attributable to a First Nation

Subsection 5(1) requires that an administration agreement in respect of the FNGST law of a particular first nation provide for payments by the Government of Canada to the particular first nation in respect of that law. The payments are to be based on an estimate for each calendar year of the "tax attributable to the first nation".

The "tax attributable to the first nation" is the total of the amount determined under paragraph 5(1)(*a*) in respect of tax payable by persons other than listed financial institutions and the amount determined under paragraph 5(1)(*b*) in respect of tax payable by listed financial institutions.

The net amount determined under paragraph 5(1)(*a*) is the total of all amounts of 7-per-cent tax that is imposed under the law of the particular first nation, under the law of any other first nation or under Part IX of the *Excise Tax Act* and that is attributable to property or services that are for consumption or use on the lands of the particular first nation, minus the portion of that total tax that is recoverable as input tax credits or otherwise. The calculation does not include tax attributable to the 8-per-cent component of the HST imposed under the *Excise Tax Act.*

As noted, the amounts included under paragraph 5(1)(*a*) in the "tax attributable to the particular first nation" can include amounts of GST, or the 7-per-cent component of the HST, imposed under the *Excise Tax Act,* or FNGST imposed under the law of another first nation. For example, the tax attributable to a particular first nation will include GST if a taxable supply of property or a service is made off the lands of the particular first nation but the property or service is consumed or used on those lands. Conversely, amounts of FNGST imposed under the law of a particular first nation are not included in the "tax attributable to the first nation" if that FNGST is attributable to property or a service that is consumed off the lands of the first nation.

Under paragraph 5(1)(*b*), a special attribution formula is used to arrive at the amount of total tax payable by listed financial institutions (e.g., banks, trust companies and insurance companies) that is attributable to the consumption or use of goods and services by these institutions on the lands of a first nation. It is essentially the same attribution method as is used to attribute listed financial institutions' liability in respect of the 8-per-cent component of the HST to individual participating provinces, adapted to apply for FNGST purposes as if the lands of a first nation imposing an FNGST were a participating province.

Subsection 5(2) – Administration Agreement

Subsection 5(2) provides authority for the Minister of Finance, with the approval of the Governor in Council, to enter into an administration agreement on behalf of the Government of Canada with the authorized body of a first nation respecting a law of that first nation that imposes an FNGST. Paragraphs 5(2)(*a*) to (*k*) set out matters that are to be provided for in each administration agreement.

Paragraph 5(2)(*a*) requires that the administration agreement provide the method for estimating the "tax attributable to the first nation" in accordance with the formulae, rules, conditions and data sources specified in the agreement.

Paragraph 5(2)(*b*) refers to the administration agreement providing for the sharing, if any, between the first nation and the Government of Canada of the "tax attributable to the first nation". As noted above, some portion of the tax attributable to a first nation, as determined under subsection 5(1), may include GST or the 7-per-cent component of the HST imposed under the *Excise Tax Act*. This would be the case, for example, if property is subject to the GST and not the FNGST when purchased off first nation lands but is acquired for use on, and transferred to, those lands. The administration agreement would provide for any such sharing of GST by the Government of Canada with the first nation. Pursuant to paragraph 5(2)(*b*), the administration agreement would also provide for any sharing of tax imposed under the FNGST law that may be negotiated between the first nation and the Government of Canada.

Subparagraph 5(2)(*c*)(i) refers to the administration agreement providing for the retention by the Government of Canada, as its property, of the portion, if any, of the FNGST imposed under the law of the first nation that is not "tax attributable to the first nation". For example, FNGST imposed under the law of a first nation that is in respect of property or a service that is for consumption or use off the lands of that first nation would not be included in the tax attributable to that first nation.

The tax referred to in subparagraph 5(2)(*c*)(ii) is the Government of Canada's share, if any, of the tax attributable to the first nation, as may be provided for in the administration agreement pursuant to paragraph 5(2)(*b*).

Paragraph 5(2)(*d*) requires that the administration agreement provide for payments by the Government of Canada to the first nation in respect of the tax attributable to the first nation and for the other matters referred to in that paragraph relating to payments.

Paragraph 5(2)(*e*) requires that the administration agreement provide for the administration and enforcement by the Government of Canada of the law of the first nation that imposes the FNGST and for the collection by the Government of Canada of amounts imposed under that law.

Paragraphs 5(2)(*f*) to (*k*) require that the agreement provide for the other matters referred to in those paragraphs including sharing of information, accounting for amounts collected, payment by the Government of Canada of amounts imposed under the first nation law and by the first nation of amounts imposed under Part IX of the *Excise Tax Act* and the laws of other first nations imposing an FNGST and compliance by the Government of Canada with the first nation law and by the first nation with Part IX of the *Excise Tax Act* and with the laws of other first nations imposing an FNGST.

Subsection 5(3) – Amending Agreements

Subsection 5(3) gives authority for the Minister of Finance, with the approval of the Governor in Counsel, on behalf of the Government of Canada to enter into an agreement with the authorized body of a first nation amending or varying an administration agreement with that first nation or amending or varying an agreement that amends or varies an administration agreement.

Subsection 5(4) – Payments to First Nation

Subsection 5(4) gives authority for the Minister of Finance to pay to a first nation, out of the Consolidated Revenue Fund, amounts determined in accordance with an administration agreement made with that first nation and advances in respect of those amounts.

Subsection 5(5) – Payments to Other Persons

Subsection 5(5) gives authority for payment, out of the Consolidated Revenue Fund and in accordance with the administration agreement made with a first nation, of any amount that is payable to a person under the law of the first nation that imposes an FNGST.

Subsection 5(6) – Recoverable Advances

Subsection 5(6) gives authority for the payment of amounts referred to in subsection 5(5), out of the Consolidated Revenue Fund and in accordance with the administration agreement made with a first nation, as advances in respect of any amount that is payable to a person under the law of the first nation that imposes an FNGST.

Section 6 – Statutory Authority to Make Payments

Section 6 provides that, without any other or further appropriation or authority, the Government of Canada can make payments to a first nation of:

- amounts that are determined in accordance with the provisions of the administration agreement, between the Government of Canada and the first nation, in respect of an FNGST law of the first nation, as provided under paragraph 5(4)(*a*); and

- advances in respect of those payments, as provided under paragraph 5(4)(*b*).

Section 6 also provides that, without any other or further appropriation or authority, payments can be made out of the Consolidated Revenue Fund to a person on account of any amount that is payable to the person under the first nation law in accordance with the administration agreement. Those payments may be made as a recoverable advance, if the administration agreement between the Government of Canada and the first nation so provides.

Subsection 7(1) – Coming Into Force of Law under Subsection 4(1)

Subsection 7(1) provides that a first nation law enacted under subsection 4(1) cannot come into force before the day on which the Minister of Finance receives a copy of that law. Further, that law cannot come into force before the day on which an administration agreement in respect of that law, entered into between the Minister of Finance on behalf of the Government of Canada and the first nation, has come into effect.

Subsection 7(2) – Law Deemed not in Force

Subsection 7(2) provides that an FNGST law enacted under the authority provided in subsection 4(1) is deemed not to be in force at any time at which an administration agreement in respect of that law between the Government of Canada and the first nation is not in effect. Therefore, if a first nation enacted its FNGST law under the authority of subsection 4(1) and the administration agreement in respect of that law were terminated by either party, the first nation's FNGST law would be deemed to be no longer in force. Consequently, the FNGST would no longer be imposed under the first nation law, the GST would become payable as previously and the exemption under section 87 of the *Indian Act* or any similar exemption would again be applicable.

Subsection 12(3) deals with comparable circumstances in the case of a first nation's FNGST law enacted under an authority separate from that in subsection 4(1).

Subsection 7(3) – Law not Subject to *Statutory Instruments Act*

Subsection 7(3) provides that a first nation's FNGST law enacted under the authority of subsection 4(1) is not subject to the *Statutory Instruments Act*. Accordingly, that FNGST law would not have to be published in the *Canada Gazette*.

Section 8 – Proof of Law

Section 8 concerns the certification of copies of FNGST laws as being true copies that can be relied on by a court. Section 8 provides that, in the case of a law enacted under subsection 4(1), such certification can be provided by the Minister of Finance or a person authorized by that Minister.

A copy of an FNGST law enacted under subsection 4(1) that has been certified to be a true copy by the Minister of Finance or a person authorized by the Minister is also evidence that the FNGST law was received by the Minister of Finance, as required by subsection 7(1).

In the case of a first nation that enacts its FNGST law under an authority other than that provided by subsection 4(1), a person authorized by the governing body of the first nation can provide certification that a copy of the first nation's FNGST law is a true copy that can be relied upon by a court.

Subsection 9(1) – Law of a Band

Subsection 9(1) outlines the conditions for the valid enactment of an FNGST law made by a band under the authority of subsection 4(1). Subsection 9(1) provides that the FNGST law is valid if the power of the council of the band to enact the law is exercised in conformity with paragraph 2(3)(*b*) of the *Indian Act*.

The requirements for the valid enactment of a law by a first nation that is not a band normally would be set out in the constitution of that first nation or in the federal legislation that establishes it as a first nation other than a band.

Subsection 9(2) – Expenditures

Subsection 9(2) outlines requirements related to the expenditure of revenues by bands that have enacted their FNGST laws under the authority of subsection 4(1). The exercise of the power of the governing body of a band to expend moneys paid to the first nation pursuant to the administration agreement in respect of that FNGST law is validly exercised only if it is exercised in conformity with paragraph 2(3)(*b*) of the *Indian Act*. This rule does not apply in respect of a first nation other than a band, regardless of whether that first nation enacts its FNGST law under subsection 4(1) or under a separate authority.

Subsection 9(3) – Publication of Law

Subsection 9(3) specifies requirements for publishing the FNGST law of a band. A copy of that law is required to be published in a newspaper that has general circulation on the reserves where the law applies and in the *First Nations Gazette*.

Subsection 9(4) – Indian Moneys

Subsection 9(4) provides that moneys raised from the FNGST do not constitute "Indian moneys" as that term is defined in the *Indian Act*. Under the *Indian Act*, Indian moneys are collected, received or held by Her Majesty in right of Canada for the use and benefit of Indians or bands.

Section 10 – Provisions of Other Acts of Parliament

Subsection 10(1) pertains to those first nations that are not bands and whose power to enact laws is recognized or granted under other federal legislation or under agreements given effect by other federal legislation but whose FNGST laws are enacted under subsection 4(1). That other federal legislation or agreement might include provisions governing matters such as the expenditure of revenues, the style, form and registration of laws and the procedures for enacting, publishing and providing copies of first nation laws. In that case, those provisions of that other federal legislation or agreement apply, with such modifications as may be required, for the purposes of an FNGST law enacted by the first nation under subsection 4(1). However, subsection 10(2) provides that subsection 10(1) does not apply to the extent that a law of the first nation provides for the matters referred to in that subsection.

Subsection 11(1) – Meaning of "First Nation Law"

In section 11, the term "first nation law" refers to a law enacted by a first nation under subsection 4(1). References in section 11 to a first nation law therefore do not include references to a law enacted by a first nation under another authority. Section 12 applies to administration agreements in respect of the latter type of FNGST laws.

Subsection 11(2) – Administration Agreement

Subsection 11(2) gives authority for the authorized body of a first nation to enter into an administration agreement in respect of a first nation law of that first nation. The authority given here corresponds to the authority given under subsection 5(2) for the Minister of Finance to enter into an administration agreement with a first nation on behalf of the Government of Canada.

Subsection 11(3) – Rules where Agreement

Subsection 11(3) provides rules that apply in respect of a first nation law, which has been enacted under subsection 4(1), while an administration agreement in respect of that law is in effect. These rules provide for the integration of the FNGST system and the GST/HST system such that the two systems operate as one in a seamless fashion.

Paragraph 11(3)(*a*) provides that a first nation law shall apply as if it contained the provisions of Part IX of the *Excise Tax Act*, modified as necessary. For that purpose, those provisions apply as if the FNGST imposed under the first nation law in respect of taxable supplies or imported taxable supplies were imposed under subsection 165(1) and section 218 of the *Excise Tax Act* respectively and as if the FNGST imposed in respect of the bringing of property onto the lands of the first nation were imposed under subsection 220.05(1) of the *Excise Tax Act* in respect of the bringing of property into a participating province.

Accordingly, under a first nation law, the FNGST imposed in respect of a particular taxable supply applies in exactly the same manner as tax under Part IX of the *Excise Tax Act* would apply to that supply. For example, assume that a supplier makes a taxable supply on the lands of a first nation where an FNGST is in effect. The supplier would be required to collect and report the FNGST in the same manner as the supplier would do so for GST purposes, including it in their net tax for the reporting period in which the tax was collected or became collectible. The supplier would not have to distinguish between GST and FNGST amounts for purposes of this reporting.

Paragraph 11(3)(*a*) provides that the provisions of Part IX of the *Excise Tax Act* apply for the purposes of the first nation law with such modifications as the circumstances require but shall not be construed as imposing a tax except as provided under section 4. Since section 4 does not authorize the imposition by a first nation of an FNGST upon bringing goods across the international border or an 8-per-cent FNGST, the provisions of Part IX of the *Excise Tax Act* that provide for tax on imported goods and that relate to the imposition, payment or reporting of the 8-per-cent component of the HST do not apply for purposes of the first nation law.

Paragraph 11(3)(*b*) provides that the first nation law applies as if the tax imposed under Part IX of the *Excise Tax Act* were imposed under the first nation law and as if the provisions of that Part relating to that tax were included in the first nation law. This paragraph likewise ensures the full integration of the GST/HST and FNGST systems. For example, it ensures that vendors situated on first nation lands are able to claim input tax credits under the FNGST law in respect of GST/HST paid by them on inputs acquired off those lands as if the GST/HST had been paid under the first nation law. It ensures that the calculation under the FNGST law of amounts that take into account tax paid in respect of any matter, such as the basic tax content of capital property, includes the GST/HST paid under the *Excise Tax Act* as if that tax had been imposed under the first nation law.

Paragraph 11(3)(*c*) similarly ensures the seamless integration of the FNGST and the GST/HST by providing for the corollary to paragraph 11(3)(*b*), which results in the FNGST being taken into account in applying the provisions of Part IX of the *Excise Tax Act* as if the FNGST had been imposed under that Part.

Paragraph 11(3)(*d*) ensures that other Acts of Parliament apply to FNGST imposed in respect of a particular matter in the same manner as they would apply to GST/HST imposed in respect of that matter. For example, the *Financial Administration Act* provides authority for the remission of tax imposed under Part IX of the *Excise Tax Act*. The *Financial Administration Act* shall similarly provide for the remission of FNGST since that Act will apply as if the FNGST were imposed under Part IX of *the Excise Tax Act*. Similarly, the *Income Tax Act* makes reference to tax imposed under Part IX of the *Excise Tax Act*. Those references will automatically also include the FNGST imposed by a first nation while an administration agreement in respect of the first nation law under which that FNGST is imposed is in effect.

Subparagraphs 11(3)(*e*)(i) to (vii) apply for greater certainty in determining the application of paragraphs 11(3)(*a*) to (*d*). For example, subparagraph 11(3)(*e*)(i) states that a person who does anything to satisfy a requirement of the first nation law that would satisfy a corresponding requirement of Part IX of the *Excise Tax Act* if the tax imposed under the first nation law were imposed under that Part satisfies the requirement of the first nation law.

Similarly, the result described in subparagraph 11(3)(*e*)(*vii*) that a proceeding that may be taken under any other Act of Parliament in respect of tax imposed under Part IX of the *Excise Tax Act* may be taken in respect of tax imposed under the first nation law follows from paragraph 11(3(*d*), which provides that those other Acts of Parliament apply as if the tax imposed under the first nation law were imposed under Part IX of the *Excise Tax Act.* For example, if a proceeding may be taken under the *Tax Court of Canada Act* in respect of an appeal from a GST assessment, the proceeding may be taken under that Act in respect of an appeal from an FNGST assessment.

Subsection 12(1) – Meaning of "First Nation Law"

In section 12, the term "first nation law" refers to a law that imposes an FNGST and that is consistent with an FNGST law enacted under subsection 4(1) but is, in this case, enacted under a power recognized or granted under any other Act of Parliament or under an agreement that has been given effect by any other Act of Parliament.

The *First Nations Goods and Services Tax Act* does not legislate with respect to the application of a tax law enacted by a first nation under a power granted or recognized under another Act of Parliament or an agreement given effect by another Act of Parliament, except to provide that, in order for an administration agreement in respect of that law to be entered into between the first nation and the Government of Canada, that law must be consistent with a tax law that may be enacted under subsection 4(1). If a law made by a first nation under a separate authority imposed tax in respect of supplies on the first nation's lands but was not consistent with the provisions of the *First Nations Goods and Services Tax Act* and thus was not the subject of an administration agreement with the Government of Canada, section 13 would not remove the application of GST to those supplies.

Subsection 12(2) – Rules where Agreement

Subsection 12(2) provides rules that apply in respect of a first nation law, which has been enacted under a power granted or recognized by another Act of Parliament or an agreement given effect by another Act of Parliament, while an administration agreement in respect of that law is in effect. These rules of application are identical to those

governing the integration of the GST/HST and an FNGST imposed under a law enacted under subsection 4(1), to the extent that they relate to the application of the *Excise Tax Act* and other Acts of Parliament in relation to the first nation law. The matters referred to in paragraphs 11(3)(*a*) and (*b*) are not also addressed in subsection 12(2) because those matters would be provided for by provisions of the first nation law, but they must be consistent with the comparable provisions of subsection 11(3) in order for an administration agreement in respect of the first nation law to be entered into between the Government of Canada and the first nation.

Subsection 12(3) – Cessation of Agreement

Subsection 12(3) provides that, where a first nation has enacted its FNGST law under an authority other than that provided under subsection 4(1) and an administration agreement in respect of that law between the Government of Canada and the first nation ceases at any time to be in effect, the *First Nations Goods and Services Tax Act* applies after that time as if the FNGST law of that first nation had been repealed at that time. In those circumstances the first nation law would continue to apply; however, the GST would become payable, as previously.

Section 13 – Tax not Payable

Section 13 ensures that the 7-per-cent GST, or the 7-per-cent component of the HST, does not apply in respect of a particular taxable supply if FNGST is imposed under the first nation law in respect of the same supply.

Section 14 – Offences

Section 14 provides that, where an administration agreement is in effect in respect of a first nation law, a person who commits an act or omission in respect of that law that would be an offence if it were committed in relation to Part IX of the *Excise Tax Act* is guilty of an offence punishable on summary conviction except where the Attorney General is authorized and elects to proceed by indictment. The Attorney General of Canada may prosecute a person by indictment where the act or omission would constitute an offence punishable either on summary conviction or by indictment if it were committed in relation to Part IX of the *Excise Tax Act* (e.g., section 327 of

that Act). A person convicted of such an act or omission is liable to a punishment commensurate with that provided for under Part IX of the *Excise Tax Act*.

Section 15 – Amendment of Schedule

Section 15 allows the Governor in Council to amend the schedule to the *First Nations Goods and Services Tax Act* by adding, deleting or varying the name of a first nation or of its governing body or the description of the lands of any first nation.

Section 16 – Information Reports

Section 16 provides authority for the Minister of National Revenue to require information reports to be filed by a person subject to the FNGST law in certain circumstances. In most cases, the information needed for the purposes of an administration agreement in respect of an FNGST law, for example to estimate tax attributable to a first nation, will be obtained from statistical data sources or other sources that are not specific to particular businesses. To address those unusual circumstances when information cannot be obtained from such sources, section 16 permits the Minister of National Revenue to require a person who has a place of business on the lands of a first nation where an FNGST is in effect, or who maintains business assets on such lands, to file a special information report. The person could be required to give information in the report concerning supplies made by the person relating to the business or concerning property or services acquired or imported by the person for consumption, use or supply in connection with that business and those lands.

An information report required to be filed under section 16 must be filed in the form and manner authorized by the Minister of National Revenue and be filed at the time, and contain the information, specified by that Minister.

Schedule to the *First Nations Goods and Services Tax Act*

The schedule to the *First Nations Goods and Services Tax Act* lists first nations eligible to enact an FNGST law and to enter into an administration agreement respecting its FNGST law with the Government of Canada. The schedule also lists, for each first nation named in the schedule, the body designated as its governing body for purposes of the enactment of its FNGST law, as well as a description of the lands over which that law applies.

Clause 68

Consequential Amendments to the *Excise Tax Act*

This clause amends section 295 of the *Excise Tax Act,* which protects confidential information obtained in the course of administering Part IX of the *Excise Tax Act* and sets out circumstances in which, and the purposes for which, that information can be disclosed.

Subparagraph 295(5)(*d*)(i) of the *Excise Tax Act* is amended to allow confidential information to be provided to officials of the Department of Finance for the purposes of an administration agreement as defined in subsection 2(1) of the *First Nations Goods and Services Tax Act.*

To ensure consistent application of these provisions in relation to agreements entered into with aboriginal governments under the *Federal-Provincial Fiscal Arrangements Act,* the amendment also allows for the provision of confidential information to officials of the Department of Finance for the purposes of an administration agreement, as defined in subsection 2(1) of that Act.

In addition, paragraph 295(5)(*d*) of the *Excise Tax Act* is amended by adding new subparagraph (iv.2) to allow confidential information protected under Part IX of that Act to be provided to persons authorized by the governing body of a first nation listed in the schedule to the *First Nations Goods and Services Tax Act* solely for the purposes of the formulation, evaluation or initial implementation of fiscal policy relating to a first nations goods and services tax of that first nation.

Income Tax

Clause 69

Employment Income

ITA
6

Section 6 of the *Income Tax Act* deals with employment income. The section provides for the inclusion in an employee's income of most employment-related benefits other than those specifically excluded.

Reasonable Standby Charge

ITA
6(2)

Subsection 6(2) provides rules concerning the calculation of a reasonable standby charge which must be included in computing an employee's income where an employer-provided automobile is made available to the employee. Currently, the standby charge may be reduced where personal use of the employer-provided automobile is less than 1000 kilometres per month and all or substantially all of the use of the automobile is in connection with or in the course of the office or employment.

This subsection is amended to permit the standby charge to be reduced where personal use of the employer-provided automobile is less than 1667 kilometres per month and the automobile is used primarily in connection with or in the course of the office or employment.

This amendment applies to the 2003 and subsequent taxation years.

Clause 70

Capital Gains Deferral – Eligible Small Business Investments

ITA
44.1

Section 44.1 of the Act permits an individual to defer, in certain circumstances, the recognition for income tax purposes of all or a portion of a capital gain arising on a disposition of an eligible small business investment.

Definitions

ITA
44.1(1)

Subsection 44.1(1) of the Act defines terms used in section 44.1.

"qualifying cost"

The definition "qualifying cost" of an individual's replacement shares in respect of a particular qualifying disposition is relevant in computing the individual's permitted deferral in respect of the qualifying disposition. The qualifying cost is the lesser of two amounts. The first is the cost of the replacement shares issued by the particular eligible small business corporation. The second is the amount by which $2,000,000 exceeds the total of the cost of all other replacement shares in respect of other qualifying dispositions of the individual at or before the time of the qualifying disposition that were shares of the particular eligible small business corporation or an eligible small business corporation related to it at the time the share was acquired.

This definition is repealed consequential on the elimination of the $2,000,000 original investment limit for each eligible small business corporation or a related group, applicable for dispositions that occur after February 18, 2003.

“qualifying portion of a capital gain”

The definition “qualifying portion of a capital gain” of an individual from a qualifying disposition is relevant for the purpose of the definition “permitted deferral”. An individual's qualifying portion of a capital gain from a particular qualifying disposition of shares of an eligible small business corporation is determined as that proportion of the capital gain from that disposition that can be attributed to the amount of adjusted cost base of the shares disposed of that does not exceed the $2,000,000 investment limit.

This definition is repealed consequential on the elimination of the $2,000,000 original investment limit for each eligible small business corporation or a related group, applicable for dispositions that occur after February 18, 2003.

“qualifying portion of the proceeds of disposition”

The definition “qualifying portion of the proceeds of disposition” of an individual from a qualifying disposition is relevant for the purposes of the term “permitted deferral”. The individual's qualifying portion of the proceeds of disposition represents the maximum amount that the individual can include as the qualifying cost of replacement shares when calculating the permitted deferral of the individual in respect of the qualifying disposition.

This definition is repealed consequential on the elimination of the $2,000,000 original investment limit for each eligible small business corporation or a related group, applicable for dispositions that occur after February 18, 2003.

“ACB reduction”

The definition “ACB reduction” is relevant for the purpose of paragraph 44.1(2)(*b*). An individual's ACB reduction in respect of a replacement share of an individual in respect of a qualifying disposition is determined as that proportion of the permitted deferral of the individual in respect of the qualifying disposition that the qualifying cost to the individual of the replacement share is of the qualifying cost to the individual of all replacement shares. The ACB

reduction reduces the adjusted cost base to the individual of the replacement share under paragraph 44.1(2)(*b*) and subparagraph 53(2)(*a*)(v) of the Act.

This definition is amended to replace the references to the definition "qualifying cost" with references to the word "cost". This amendment is consequential on the repeal of the definition "qualifying cost" and is applicable for dispositions that occur after February 18, 2003.

"permitted deferral"

An individual's "permitted deferral" in respect of a qualifying disposition is the amount of a capital gain from the disposition that can be deferred. It reduces the individual's capital gain upon a qualifying disposition. It is determined as that part of an individual's qualifying portion of a capital gain from a qualifying disposition that the total of that individual's qualifying cost of replacement shares in respect of the disposition is of the individual's qualifying proceeds of disposition in respect of the disposition.

This definition is amended to replace the reference to the definition "qualifying cost" with a reference to the word "cost", the reference to the definition "qualifying portion of proceeds of disposition" with a reference to the expression "proceeds of disposition" and the reference to the definition "qualifying portion of the capital gain" with a reference to the expression "capital gain". These amendments are consequential on the repeal of the definitions "qualifying cost", "qualifying portion of the proceeds of disposition" and "qualifying portion of a capital gain" and are applicable for dispositions that occur after February 18, 2003.

"replacement share"

The definition "replacement share" of an individual is relevant for the purposes of the term "permitted deferral". A replacement share of an individual in respect of a particular qualifying disposition of the individual in a taxation year means a share of an eligible small business corporation that was designated by the individual in the individual's return of income to be a replacement share of the individual in respect of the qualifying disposition and that was

acquired by the individual in the year the qualifying disposition was made or within 60 days after that year, but no later than 120 days after the qualifying disposition.

This definition is amended to extend the time for acquiring replacement shares to any time in the year in which the qualifying disposition is made or within 120 days after the end of that year. This amendment applies to dispositions that occur after February 18, 2003.

Clause 71

Transfers of Refund of Premiums Under RRSP

ITA
60(*l*)

Section 60 of the Act provides for various deductions in computing income.

When an individual who is a financially dependent child or grandchild of another person receives, as a consequence of the death of that person, a distribution from the deceased's registered retirement savings plan (RRSP) or registered retirement income fund (RRIF), the individual is generally required to include the amount in income. However, where the individual was financially dependent on the deceased because of a physical or mental infirmity, paragraph 60(*l*) provides an offsetting deduction if the amount is paid into an RRSP or RRIF of the individual or is used to acquire a specified annuity.

Paragraph 60(*l*) is amended to extend this rollover treatment to lump sum benefits received out of a registered pension plan (RPP) by a financially dependent infirm child or grandchild as a consequence of the death of a supporting parent or grandparent. In determining eligibility for the rollover, new subsection 146(1.1) provides a rebuttable presumption that an infirm child or grandchild is not financially dependent if, for the year preceding the parent or grandparent's death, the income of the child or grandchild exceeded $13,814 (indexed for deaths occurring after 2003). This same rule applies in determining eligibility for the rollover of RRSP and RRIF proceeds.

This amendment is, in part, consequential on the 2003 Budget proposal to allow money purchase RPPs to pay retirement income in the same manner as is permitted under a RRIF.

Amended paragraph 60(*l*) applies in respect of deaths that occur after 2002.

Clause 72

Pension Benefits

ITA
104(27)

Subsection 104(27) of the Act allows a testamentary trust that is resident in Canada to flow through to a beneficiary the character of certain pension benefits received by the trust and included in the beneficiary's income.

Subsection 104(27) is amended to add a rule consequential on the introduction of the new rollover provision in paragraph 60(*l*) for certain lump sum pension benefits. That provision enables a financially dependent infirm child to defer tax on a lump sum benefit received out of a registered pension plan (RPP) as a consequence of the death of a supporting parent or grandparent where the amount is paid into a registered retirement savings plan or registered retirement income fund or used to acquire a specified annuity. The amendment to paragraph 104(27)(*e*) (paragraph 104(27)(*c*) in the French version of the Act) ensures that the rollover is also available where the lump sum RPP benefit is paid to a testamentary trust and included in the income of the child. For further details, see the commentary to paragraph 60(*l*).

This amendment applies in respect of deaths that occur after 2002.

Clause 73

Medical Expense Tax Credit

ITA
118.2

Section 118.2 of the Act provides rules for determining the amount that may be claimed, as a tax credit, in respect of an individual's medical expenses.

ITA
118.2(2)

Subsection 118.2(2) sets out the various expenses that are considered to be qualifying medical expenses. The list of eligible medical expenses is regularly reviewed in light of new technologies and other disability-specific or medically related developments. Accordingly, subsection 118.2(2) is amended in four respects.

First, new paragraph 118.2(2)(*l*.4) adds to the list of eligible medical expenses amounts paid for real-time captioning on behalf of individuals with a speech or hearing impairment. In order to qualify as medical expenses, the amounts must be paid to persons engaged in the business of providing such services.

Second, new paragraph 118.2(2)(*l*.41) adds to the list of eligible medical expenses amounts paid for note-taking services on behalf of a patient who has a mental or physical impairment. In order to qualify as medical expenses, the amounts must be paid to persons engaged in the business of providing such services and a medical practitioner must certify the need for those services.

Third, new paragraph 118.2(2)*(l.42)* adds to the list of eligible medical expenses amounts paid for voice recognition software used by individuals with a physical impairment. In order to qualify as medical expenses, the need for the software must be certified by a medical practitioner.

Finally, new paragraph 118.2(2)(*r*) adds to the list of eligible medical expenses the incremental cost of acquiring gluten-free food products as compared to comparable non-gluten-free food products for individuals with celiac disease who require a gluten-free diet. In order to qualify as medical expenses, a medical practitioner must certify in writing that the patient is a person who, because of celiac disease, requires a gluten-free diet. Comparable gluten-free food products are food products produced as a substitute for food products that typically contain a gluten-laden agent as a principal component and are generally targeted at persons requiring a gluten-free diet. In that sense, products such as rice, corn or buckwheat-based breads constitute eligible products. However, products that do not have gluten as a principal component, such as dairy products or fruits, are not eligible for this purpose.

These amendments apply for the 2003 and subsequent taxation years.

Clause 74

Tax Credit for Mental or Physical Impairment

ITA
118.3

Section 118.3 of the Act provides a tax credit, generally referred to as the Disability Tax Credit (DTC), for individuals who have a severe and prolonged mental or physical impairment.

Eligibility for the DTC is based on the effects of the impairment rather than the presence of a condition.

Subparagraph 118.3 (1)(*a*.2)(iii) of the Act is amended to replace the phrase “feeding and dressing” with “feeding or dressing”, consequential to the amendment to subparagraph 118.4(1)(*c*)(ii). (See the commentary below on the amendments to subsection 118.4(1) for further details.) This amendment applies to the 2003 and subsequent taxation years.

Clause 75

Nature of Impairment

ITA
118.4(1)

Section 118.4 of the Act sets out circumstances in which an individual is considered to have a severe and prolonged impairment for the purposes of the DTC.

Subparagraph 118.4(1)(*c*)(ii) provides that a basic activity of daily living in relation to an individual includes "feeding <u>and</u> dressing oneself".

Subsection 118.4 (1) is amended in two respects. First, paragraph 118.4 (1)(*c*) is amended to replace the phrase "feeding and dressing oneself " with "feeding oneself or dressing oneself". This change clarifies that "feeding oneself" and "dressing oneself" are distinct basic living activities under the eligibility rules, which is consistent with the jurisprudence interpreting the phrase "feeding and dressing oneself" and the March 2002 recommendation of the House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

Second, subsection 118.4(1) is amended to define the terms "feeding oneself" and "dressing oneself".

New paragraph 118.4 (1)(*e*) specifies that feeding oneself does not include any of the activities of identifying, finding, shopping for or otherwise procuring food, or the activity of preparing food to the extent that the time associated with that activity would not have been necessary in the absence of a dietary restriction or regime. Accordingly, individuals who are markedly restricted in their ability to prepare a meal because of a physical impairment (such as severe arthritis) will continue to be eligible for the DTC.

New paragraph 118.4(1)(*f*) provides that dressing oneself does not include the activities of identifying, finding, shopping for or otherwise procuring clothing.

These amendments apply for the 2003 and subsequent taxation years.

Clause 76

Education Tax Credit - Disabled Students

ITA
118.6(3)(*b*)

Section 118.6 of the Act provides an education tax credit to students enrolled on a full-time basis in qualifying educational programs at designated educational institutions. Paragraph 118.6(3)(*b*) removes the requirement that a student be enrolled at the designated educational institution on a full-time basis if the student cannot reasonably be expected to be enrolled as a full-time student because of a severe and prolonged mental or physical impairment, as certified in writing by a medical doctor.

Paragraph 118.6(3)(*b*) is amended in two respects. First, it is amended to add a reference in new subparagraph (*b*)(i.1) to speech impairment (as certified in prescribed form by a medical doctor or a speech language pathologist). This amendment is consequential to the enactment of subparagraph 118.3(1)(*a*.2)(i.1), both of which apply to certifications made after October 17, 2000.

Second, subparagraph 118.6(3)(*b*)(iii) (subparagraph 118.6(3)(*b*)(iv) in the French version of the Act) is amended to replace the expression "feeding and dressing" with the expression "feeding or dressing", consequential to the amendment to subparagraph 118.4(1)(*c*)(ii). This amendment applies for the 2003 and subsequent taxation years. (See the commentary on new subsection 118.4(1) for further details.)

Clause 77

Canada Child Tax Benefit

ITA
122.61

Section 122.61 of the Act provides for the calculation of the Canada Child Tax Benefit (CCTB). The CCTB is made up of two parts: a basic amount, and a National Child Benefit (NCB) supplement.

NCB supplement

The amount of the NCB supplement payable to a family in respect of each qualified dependant varies depending on the number of qualified dependants in each family. With indexation, the NCB supplement for July 2003 is $1,313 for the first qualified dependant, $1,104 for the second qualified dependant, and $1,026 for each of the third and subsequent qualified dependants. Subsection 122.61(1) is amended to increase each of the three amounts by $150 for July 2003. Subsection 122.61(6) is also amended to provide for further increases in the annual NCB supplement, after indexation, of $185 in each of July 2005 and July 2006.

The NCB is reduced by family net income in excess of a threshold amount. Subsection 122.61(1) is also amended to adjust the income threshold at which the NCB supplement begins to be phased out, keeping the reduction rate for the first child constant at 12.2 per cent.

These amendments apply to overpayments that are deemed to arise after June 2003.

Child disability benefit

Subsection 122.61 is further amended to introduce a $1,600 Child Disability Benefit (CDB). The CDB is a supplement of the CCTB, and will be paid for each eligible child who meets the eligibility criteria for the disability tax credit (DTC).

The full $1,600 CDB will be provided for each eligible child to families having a net income below the amount at which the NCB supplement is fully phased out (that is, $33,487 in July 2003 for families having three or fewer children). Beyond that income level, benefits will be reduced at the same rate as the NCB supplement is reduced.

This amendment applies to overpayments that are deemed to arise after June 2003.

Clause 78

CCPC Deduction

ITA
123.4

Section 123.4 of the Act provides two deductions from the tax otherwise payable under the Act by a corporation. One of these, in subsection 123.4(2), is a "general rate reduction," available in respect of most forms of income. The other, in subsection 123.4(3), is available only to Canadian-controlled private corporations (CCPCs), and only in respect of active business income. Currently, subsection 123.4(3) allows a CCPC to deduct an amount from its tax otherwise payable for a taxation year under Part I of the Act. In general terms, as a result of this deduction the corporate tax rate on income between $200,000 and $300,000 earned by a CCPC from an active business carried on in Canada is reduced from 28 per cent to 21 per cent. Income eligible for this deduction is reduced to the extent that the corporation has already benefited from a reduced effective tax rate. As well, associated corporations must share this deduction in proportion to their small business limit.

Repeal of 123.4(3) CCPC Deduction

Since the general rate reduction contained in subsection 123.4(2) will reduce the tax rate for all corporations, including CCPCs, on most active business income from 28% to 21% for calendar years after 2003 (prorated for off-calendar taxation years), the CCPC deduction in subsection 123.4(3) is repealed, effective for the 2005 and subsequent taxation years. This timing ensures that a CCPC whose 2004 taxation year includes part of the 2003 calendar year, and whose general rate reduction for that taxation year would thus be less than the full 7%, can still access the CCPC deduction.

Transition

Before the repeal of subsection 123.4(3) takes effect, a modified version of the subsection will apply for the 2003 and 2004 taxation years.

The amount eligible for the CCPC deduction in a taxation year is the amount by which the least of three amounts exceeds income for the year that has already qualified for special tax treatment (e.g. income for which an M&P credit or a small business deduction was claimed). The three amounts, broadly, are a multiple of the CCPC's section 125 business limit for the year, its active business income for the year earned in Canada (re-calculated to increase amounts received through a specified partnership), and its taxable income for the year less its investment income for the year.

Currently, the first of those limits – which is found in paragraph 123.4(3)(*a*) – is the corporation's business limit for the year times 3/2. The fraction represents the maximum amount eligible for this additional deduction ($300,000) divided by the current maximum business limit available to a CCPC (ignoring short taxation years, and reductions because of high levels of taxable capital) of $200,000. Therefore, for a corporation that is not associated with any other, nor subject to a reduction in the business limit, the amount determined would be the maximum, or $300,000. For associated corporations, which share the business limit, the maximum amount under paragraph 123.4(3)(*a*) is each associated corporation's business limit times 3/2.

Paragraph 123.4(3)(*a*) is amended to ensure that the amount calculated reflects the increase in the maximum business limit for the 2003 and 2004 taxation years. The fraction is changed so that $300,000 is still divided by the maximum business limit for the year for the corporation, calculated before any reductions due to a short calendar year, or because of the reduction for corporations with taxable capital in excess of $10 million. The product obtained is multiplied by the corporation's actual business limit for the year. This determines the appropriate amount of the additional $300,000, from which other income is deducted (assuming this is the least of the three amounts) to determine the amount eligible for this reduced rate of tax.

The calculation of active business income earned through a specified partnership is also amended to reflect increases in the maximum business limit. Active business income earned in Canada through a specified partnership is eligible for the small business deduction, and for the additional deduction under subsection 123.4(3).

Paragraph 123.4(3)(*b*) ensures that when re-calculating a corporation's active business income earned in Canada for the year, any active business income earned through a specified partnership between $200,000 and $300,000 is included, and eligible for the reduced rate of tax. Paragraph 123.4(3)(*b*) is amended to ensure that the difference between the increased business limit of a corporation under the new rules and $300,000 continues to be included in this calculation by requiring that the definition of specified partnership income contained in subsection 125(7) of the Act be read as if the specified partnership's fiscal period began after 2005.

Consequential Amendments

The repeal of subsection 123.4(3) means that the definition “CCPC rate reduction percentage” in subsection 123.4(1) is unnecessary, and it is repealed. Similarly, the definition “full rate taxable income” in that subsection includes, in its paragraph (*b*)(iv), a reference to income that has benefited from subsection 123.4(3). That reference is also repealed. Further, the expiry of the special tax treatment formerly available to non-resident-owned investment corporations makes the reference to such corporations in paragraph (*c*) of the definition of “full rate taxable income” redundant.

The amendments repealing subsection 123.4(3), the definition of “CCPC rate reduction percentage”, paragraph (*b*)(vi) of “full rate taxable income” and the removal of the reference to non-resident owned investment corporations apply to the 2005 and subsequent taxation years.

The amendments to paragraphs 123.4(3)(*a*) and (*b*) of the Act apply to the 2003 and 2004 taxation years.

Clause 79

Small Business Deduction

ITA
125(2) to (4)

Section 125 of the Act establishes the special low rate of tax applicable to the income of a Canadian-controlled private corporation (CCPC) from an active business carried on in Canada. This preferential tax rate is provided by way of an annual tax credit, commonly referred to as the "small business deduction", which is calculated as 16% of the least of: a corporation's active business income from a taxation year; its taxable income for the year; and its business limit for the year.

Interpretation of business limit

ITA
125(2)

Subsection 125(2) of the Act defines the term "business limit". Currently a corporation's business limit is $200,000, which must be shared among members of a group of associated corporations. Subsection 125(2) is amended to increase the amount of the business limit to $300,000. This increase is being phased in over four years by increments of $25,000 each year, starting in 2003. For any taxation year that begins after 2005, the business limit under subsection 125(2) (which is, it should be noted, subject to adjustment by other provisions of section 125) will be $300,000. For earlier taxation years, a corporation's business limit under subsection 125(2) will be the total of the following:

(i) that proportion of $200,000 that the number of days in the taxation year that fall before 2003 is of the number of days in the taxation year;

(ii) that proportion of $225,000 that the number of days in the taxation year that fall in 2003 is of the number of days in the taxation year;

(iii) that proportion of $250,000 that the number of days in the taxation year that fall in 2004 is of the number of days in the taxation year;

(iv) that proportion of $275,000 that the number of days in the taxation year that fall in 2005 is of the number of days in the taxation year; and

(v) that proportion of $300,000 that the number of days in the taxation year that fall after 2005 is of the number of days in the taxation year.

Associated corporations

ITA
125(3)

Subsection 125(3) of the Act requires that associated corporations file with the Minister of National Revenue an election, in prescribed form, in which the group apportions to one or more of its corporations the maximum business limit for the year (currently $200,000). This subsection is amended, for the 2003 and subsequent taxation years, to reflect the increase in the maximum business limit from $200,000 to $300,000. Under amended subsection 125(3), associated CCPCs will determine their business limits for a year in a two-stage process. First, the associated corporations will assign to one or more members of the associated group a percentage such that the total of the percentages assigned does not exceed 100%. (If the total does exceed 100%, then the associated group has a business limit of nil.) The corporations must, as currently, file an agreement in prescribed form in order for this allocation to have effect.

Second, each associated corporation to which a percentage has been assigned will multiply that percentage by a dollar figure. For taxation years that begin after 2005, that dollar figure will be $300,000. For taxation years that begin before 2006, that dollar figure will be the amount that would be the corporation's business limit for the year, determined without reference to the adjustments in subsections 125(5) and (5.1), if it were not associated in the year with any other corporation. This transitional rule ensures that the phasing-in of the $300,000 maximum business limit is appropriately reflected in the case of associated corporations.

Failure to file agreement

ITA
125(4)

Subsection 125(4) of the Act allows the Minister of National Revenue to allocate the business limit (currently $200,000) among a group of associated corporations, if the group fails to file an agreement allocating the business limit among its members within a certain period after the Minister requests such information. Subsection 125(4) is amended so that the maximum amount the Minister can allocate among a group of associated corporations is the least business limit of all the associated corporations in the group, calculated as if the corporations were not associated with any other corporation during the taxation year, and without applying the rules in subsection (5) and (5.1).

This amendment applies to the 2003 and subsequent taxation years.

Definition "specified partnership income"

ITA
125(7)

Subsection 125(7) of the Act provides definitions for the terms used in section 125, relating to the "small business deduction" for CCPCs. The "specified partnership income" of a corporation is defined in this provision and is used in determining the small business deduction of a CCPC that carries on an active business through a specified partnership.

A corporation's specified partnership income for a taxation year can be very broadly understood as the total of two amounts, A and B. "A" is the lesser of: (a) the corporation's net partnership income for the partnership's fiscal period that ends in the year; and (b) that proportion of the (prorated) maximum business limit under section 125 that the corporation's share of the partnership's Canadian-source active business income for that fiscal period is of the partnership's total of such income for the period. "B" is the lesser of: (a) the corporation's Canadian source active business losses for the year plus its "specified partnership loss" for the year; and (b) the amount, if any, by which the A (a) amount (the corporation's net partnership

income for the partnership's fiscal period that ends in the year) exceeds the A (b) amount (that proportion of the maximum business limit under section 125 that the corporation's share of the partnership's Canadian-source active business income for that fiscal period is of the partnership's total of such income for the period).

In this computation, the prorated maximum business limit under section 125 is represented by the element M in a formula. More specifically, "M" is currently described as the lesser of $200,000 (the current maximum business limit) and the amount calculated when $548 is multiplied by the number of days in a fiscal period of the partnership ending in the corporation's taxation year.

The description of "M" is amended to reflect the increase to the amount of the maximum business limit under section 125. As amended, "M" is the lesser of the business limit for the calendar year ($225,000 for 2003; $250,000 for 2004; $275,000 for 2005 and $300,000 after 2005) and the amount determined when multiplying the number of fiscal days of the partnership in the calendar year by the per day business limit for the calendar year (for 2003, $617; for 2004, $685; for 2005, $754 and after 2005, $822).

This amendment applies to taxation years that end after 2002.

Clause 80

Film or Video Production Services Tax Credit

ITA
125.5(3)

The Film or Video Production Services Tax Credit provides a refundable tax credit to eligible production corporations equal to 11% of qualified Canadian labour expenditures. The 11% credit rate is increased to 16% in respect of Canadian labour expenditures incurred after February 18, 2003.

Clause 81

Investment Tax Credit

ITA
127

Section 127 of the Act includes a set of provisions governing a taxpayer's entitlement to claim an investment tax credit.

Definitions

ITA
127(9)

Subsection 127(9) provides definitions that are used in the provisions that relate to investment tax credits.

"Flow-through mining expenditure"

The definition "flow-through mining expenditure" in subsection 127(9) of the Act defines expenditures that qualify for the 15% investment tax credit in respect of specified surface "grass-roots" mineral exploration expenses.

Paragraph (*a*) of the definition "flow-through mining expenditure" requires that qualifying expenses be incurred by a corporation after October 17, 2000 and before 2004. The amendment provides that the expense may be incurred by a corporation after October 17, 2000 and before 2005.

Paragraph (*e*) of the definition of "flow-through mining expenditure" prevents the application of subsection 66(12.66) of the Act in determining whether an expense is incurred within the time period described in paragraph (*a*) of the definition. Subsection 66(12.66) generally allows a corporation to renounce, effective on the last day of the preceding calendar year, resource expenses that the corporation incurs in the current calendar year. The removal of paragraph (*e*) will permit the application of subsection 66(12.66) in determining whether an expense is incurred before 2005 for the purposes of paragraph (*a*), as amended. As a result, expenses incurred by a

corporation in 2005 but renounced effective December 31, 2004 in accordance with subsection 66(12.66) will meet the time requirement for access to the credit.

Expenditure limit determined

ITA
127(10.2)

Subsection 127(10.1) of the Act allows a certain portion of a Canadian-controlled private corporation's (CCPC's) scientific research and experimental development (SR&ED) expenditures in a taxation year to be added in computing the CCPC's investment tax credit at the end of the year. The amount added is limited by reference to the CCPC's "expenditure limit" for the year, as determined under subsection 127(10.2) of the Act.

The expenditure limit of a corporation for a particular taxation year is an amount from nil to $2 million, determined by a formula. The formula includes two variables: the taxable income of the corporation and its associated corporations, if any, for the preceding taxation year; and the total of the section 125 business limits, for the particular year, of the corporation and any associated corporations. The effects of these variables are that a corporation's $2 million maximum expenditure limit decreases by $10 for each dollar of taxable income over $200,000 in the preceding year, and that the resulting figure is further reduced in proportion to any reduction of the total business limit of the associated group.

The $200,000 threshold for reducing the expenditure limit is, in concept, linked to the maximum business limit under section 125 of the Act, and subsection 127(10.2) is amended to reflect the increase in that limit. As amended, the expenditure limit of a corporation for a taxation year will not decrease unless the corporation (together with associated corporations) has earned more than $300,000 of taxable income in the previous taxation year. The formula is also amended so that the expenditure limit continues to be reduced for CCPCs that have business limits less than the maximum under section 125 – an amount that will change over several years as the maximum business limit increases.

More specifically, the formula in subsection 127(10.2) is currently (\$4,000,000-10A) x B/200,000. Element "A" represents the greater of \$200,000 (the maximum business limit) and the corporation's taxable income for the previous taxation year, or if the corporation is associated with other corporations, the total of the taxable incomes of each member of the group for its last taxation year that ended in the previous calendar year. Element "B" represents the business limit of the corporation, or total business limits for the associated group, for the current year.

Except in certain transitional cases described below, for taxation years that end after 2002 the amended formula is (\$5,000,000 – 10A) x B/C. Element "A" now represents the greater of \$300,000 and the previous year's taxable income amount. Element "B" remains the total of the business limits under section 125 for the current year. New element "C" replaces the figure \$200,000, as each corporation's maximum business limit will be unique, based on when the corporation's taxation year ends in the calendar year. Element "C" is the corporation's maximum business limit for the year, calculated without applying subsection 125(5) (short taxation years) and (5.1) (reduction because of taxable capital in excess of \$10 million), or the total of these amounts for a group of associated corporations.

As noted above, amended subsection 127(10.2) generally applies to taxation years that end after 2002. However, if a particular taxation year immediately follows a taxation year that ended before 2003, the formula's reference to \$5 million is to be read as a reference to \$4 million, and the reference in the description of A to \$300,000 is to be read as a reference to \$200,000. This ensures that the expenditure limit is maintained at an appropriate level in those cases where the increased maximum business limit was not in place for the previous year.

Associated CCPCs

ITA
127(10.21)

New subsection 127(10.21) of the Act replicates a rule that is currently found within subsection 127(10.1). This rule provides that the expenditure limit for a taxation year of a Canadian-controlled private corporation (CCPC) that is associated with one or more other

CCPCs in the year is nil, except as otherwise provided in section 127. Subsection 127(10.3) allows a group of associated CCPCs to file an election with the Minister of National Revenue in which the group allocates the maximum expenditure limit for the group (calculated in subsection 127(10.2)) among the members of the group. Subsection 127(10.4) provides that in the event a group of associated CCPCs fails to file an election within 30 days after the Minister has requested this information, the Minister will allocate the expenditure limit (determined in subsection 127(10.2)) among the group. Subsection 127(10.6) provides rules that apply if a CCPC either has two taxation years ending in the same calendar year or has a short taxation year.

New subsection 127(10.21) applies to taxation years that end after 2002.

Clause 82

Registered Retirement Savings Plans

ITA
146

Section 146 of the Act provides rules relating to registered retirement savings plans (RRSPs).

Definitions

ITA
146(1)

"refund of premiums"

Subsection 146(1) defines "refund of premiums", which is relevant for the purposes of determining the income inclusion for a deceased RRSP annuitant, the amount from a deceased annuitant's RRSP that a RRSP beneficiary may include in income and the amount that can be transferred by a beneficiary on a tax-deferred basis under paragraph 60(*l*). Because of the definition "designated benefit" in subsection 146.3(1), the definition "refund of premiums" is also relevant in connection with similar rules that apply on the death of the annuitant under a registered retirement income fund (RRIF).

When the annuitant under a RRSP dies, the value of the RRSP at death is generally included in computing the deceased's income for the year of death. However, this income inclusion can be offset by any amount paid out of the RRSP as a refund of premiums. An amount paid to a "financially dependent" child or grandchild of the deceased annuitant qualifies as a refund of premiums. For this purpose, there is a rebuttable presumption under the definition that a child or grandchild is not financially dependent if, for the year preceding that of the annuitant's death, the income of the child or grandchild exceeded the basic personal amount for that preceding year (currently $7,634 for deaths occurring in 2003).

The definition "refund of premiums" is amended to move the rebuttable presumption to new subsection 146(1.1), as well as to improve the readability of the definition.

Under new subsection 146(1.1), the income threshold used for determining the financial dependency of a mentally or physically infirm child or grandchild is increased to $13,814 (indexed for deaths occurring after 2003). The income threshold for non-infirm children remains at its current, indexed level. New subsection 146(1.1) also applies for the purpose of new clause 60(*l*)(v)(B.01) and new subparagraph 104(27)(*e*)(*i*), which provide for tax-deferred transfers of certain lump sum pension benefits paid in respect of a financially dependent infirm child as a consequence of the death of a supporting parent or grandparent.

The amended definition and new subsection 146(1.1) apply in respect of deaths that occur after 2002.

"RRSP dollar limit"

Subsection 146(1) defines "RRSP dollar limit", which is relevant in determining the amount of tax-deductible contributions an individual may make to RRSPs. The RRSP dollar limit for a year is the maximum amount of new RRSP deduction room that can become available to an individual in that year. It is generally defined as the "money purchase limit" (as defined in subsection 147.1(1)) for the preceding year.

The definition of “RRSP dollar limit” is amended so that the limit for 2003 is $14,500, rather than the 2002 money purchase limit of $13,500. The RRSP dollar limit for years after 2003 continues to be the money purchase limit for the preceding year. As a consequence of amendments to increase the money purchase limit, the RRSP dollar limit for 2004, 2005 and 2006 will be $15,500, $16,500 and $18,000, respectively. For years after 2006, the limit will be $18,000 adjusted to reflect increases in the average wage.

This amendment applies after 2002.

Restriction – financially dependent

ITA
146(1.1)

See the commentary to the definition “refund of premiums” in subsection 146(1).

Clause 83

Registered Retirement Income Funds

ITA
146.3(2)

Section 146.3 of the Act provides rules relating to registered retirement income funds (RRIFs).

Acceptance of fund for registration

ITA
146.3(2)

Subsection 146.3(2) of the Act sets out the conditions that must be met in order for a retirement income fund to be registered as a RRIF.

Paragraph 146.3(2)(*a*) describes the payments that may be made out of a RRIF. This paragraph is amended to add a reference to new subsection 146.3(14.1), which allows, in certain circumstances, for the tax-free transfer of property from a RRIF to a money purchase

provision of a registered pension plan (RPP). Paragraph 146.3(2)(*a*) is also amended to replace the reference to paragraph 146.3(14)(*b*) with a reference to subsection 146.3(14), to reflect a re-numbering of that provision.

Paragraph 146.3(2)(*e*) requires the carrier of a RRIF to transfer all or part of the property held in connection with the fund to another RRIF where the annuitant requests it to do so. This condition is subject to either paragraph 146.3(2)(*e*.1) or (*e*.2), depending on the circumstances. These provisions require the carrier to retain sufficient property to enable it to pay the "minimum amount" for the year to the annuitant. If this requirement were not imposed, the minimum amount might not be paid in the year of transfer as the original carrier would have no property with which to pay it and the minimum amount for that year in respect of the transferee fund could be nil because the minimum amount is based on the fair market value of the property held by a carrier at the beginning of a year.

Paragraphs 146.3(2)(*e*.1) and (*e*.2) are amended so that the requirement that a carrier retain sufficient property to enable it to pay the minimum amount also applies in connection with transfers of property from a RRIF to a money purchase provision of an RPP in accordance with new subsection 146.3(14.1).

These amendments apply after 2003.

Transfers

ITA
146.3(14) to (14.2)

Subsection 146.3(14) of the Act provides that amounts transferred from one RRIF of an annuitant to another RRIF (paragraph 146.3(2)(*e*)), or from an annuitant's RRIF to an RRSP or RRIF of the annuitant's spouse or common-law partner or former spouse or common-law partner on the breakdown of their marriage or common-law partnership (paragraph 146.3(14)(*b*)) are considered not to be received by the annuitant.

Subsection 146.3(14) is amended, in conjunction with the introduction of subsections 146.3(14.1) and (14.2), to restructure the transfer provisions that apply to RRIFs in order to improve the readability of the provisions and to accommodate a new type of transfer.

Amended subsection 146.3(14) replaces existing paragraph 146.3(14)(*b*). It provides for the direct transfer of an amount from an annuitant's RRIF to an RRSP or RRIF of the annuitant's spouse or common-law partner or former spouse or common-law partner on the breakdown of their marriage or common-law partnership.

New subsection 146.3(14.1) is introduced to permit the direct transfer of an amount from an annuitant's RRIF to a money purchase provision of an RPP for the benefit of the annuitant, provided the annuitant was previously a member of the RPP. Subsection 146.3(14.1) is intended, in particular, to accommodate transfers of funds back into a money purchase RPP by former members who had previously transferred their money purchase account to an RRSP or RRIF and who now wish to benefit from the new RRIF-type payout option for money purchase RPPs that was announced in the 2003 Budget.

New subsection 146.3(14.2) of the Act provides that an individual is not required to include in income an amount transferred from a RRIF to another RRIF, an RRSP or a money purchase provision of an RPP in accordance with paragraph 146.3(2)(*e*) or subsection 146.3(14) or (14.1). It also provides that no taxpayer may claim a deduction in respect of any such transfer.

These amendments apply after 2003.

Clause 84

Registered Pension Plans

ITA
147.1

Section 147.1 of the Act provides rules relating to the registration, de-registration and administration of registered pension plans (RPPs).

Definitions

ITA
147.1(1)

"money purchase limit"

Subsection 147.1(1) of the Act defines "money purchase limit". The definition is relevant for a number of provisions in the Act and the *Income Tax Regulations* relating to RPPs and other deferred income plans. For example, an RPP becomes revocable if a member's pension adjustment for a year exceeds the money purchase limit for the year. The money purchase limit also provides the basis for the limits on deductible contributions to RRSPs, contributions to deferred profit sharing plans and pensions payable under defined benefit provisions of RPPs. In addition, the definition of money purchase limit is relevant in determining pension credits and other prescribed amounts in respect of individuals who participate in certain unregistered retirement arrangements.

The definition is amended to increase money purchase limit to $15,500 for 2003, $16,500 for 2004 and $18,000 for 2005. For years after 2005, the limit will be $18,000 adjusted to reflect increases in the average wage.

This amendment applies after 2002, with one qualification. For the purpose of determining an individual's pension credit for 2002 under Regulation 8308.1 (foreign pension plans) or 8308.3 (specified retirement arrangements) and an individual's prescribed amount for 2003 under Regulation 8308.2 (foreign pension plans) or 8309 (the retirement arrangement for Lieutenant Governors and the annuity scheme for federally-appointed judges), the money purchase limit for 2002 is deemed to be $14,500, rather than $13,500. The effect of this rule is to ensure that individuals who participate in these arrangements do not inadvertently receive $1,000 of additional RRSP room for 2003. This treatment is consistent with the RRSP treatment for 2003 afforded to individuals who participate in defined benefit RPPs.

Clause 85

Federal Capital Tax

ITA
Part I.3

The federal capital tax, which was introduced in 1989 as Part I.3 of the Act and is generally known as the "large corporations tax," is presently levied annually at a rate of 0.225% of a corporation's taxable capital employed in Canada in excess of a maximum $10 million capital deduction.

Certain provisions of Part I.3 are amended and others are added in order to phase out the federal capital tax over the period that begins January 1, 2004 and ends December 31, 2007.

Federal capital tax rate

ITA
181.1(1), (1.1)

Section 181.1 of the Act provides the basic rules for determining a corporation's tax payable under Part I.3 for a taxation year and the deductions that may be available in respect of the amount payable.

Existing subsection 181.1(1) of the Act sets out a specific capital tax rate. Subsection 181.1(1) is amended so that a corporation's rate of tax under Part I.3 for a taxation year is determined by reference to the term "specified percentage" defined in new subsection (1.1), rather than being a single percentage in all cases. Under new subsection (1.1), the specified percentage – and thus the federal capital tax rate – of the corporation is reduced over the phase-out period as summarized by the following table:

Calendar year	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**
Specified percentage	0.225%	0.200%	0.175%	0.125%	0.0625%	-

The corporation's specified percentage will be prorated for taxation years that overlap two or more calendar years in the phase-out period.

Example

A corporation has a 375-day taxation year that begins December 25, 2006 and ends January 3, 2008. The taxation year thus straddles the 2006, 2007, and 2008 calendar years. The specified percentages for taxation years that coincide with the 2006 and 2007 calendar years are 0.125% and 0.0625%, respectively, and nil in respect of each year that follows 2007. In this case, however, the corporation's taxation year overlaps three calendar years in the phase-out period, and its specified percentage for the taxation year would be determined as follows:

0.125% x 7/375=	*0.0023*
0.0625% x 365/375=	*0.0608*
0.0% x 3/375=	*0.0*
TOTAL	*0.0631%*

Thus, the corporation's specified percentage for the taxation year would be 0.0631%.

The amendments to subsection 181.1(1) and new subsection (1.1) apply to the 2004 and subsequent taxation years.

ITA
181.1(1.2)

New subsection 181.1(1.2) ensures that the changes to the federal capital tax rate under subsection (1) do not apply in respect of subsection 125(5.1) of the Act and the definitions "unused surtax credits" in subsections 181.1(6) and 190.1(5) of the Act. Subsection 125(5.1) restricts larger corporations' access to the small business deduction through the gradual reduction of their annual business limit. Subsection 125(5.1) phases out the small business deduction, on a straight line basis, to the extent that a corporation, either independently or together with corporations associated with the corporation, is required to pay tax under subsection 181.1(1). As a result of new subsection 181.1(1.2), a corporation will continue to apply subsection 125(5.1) as if the federal capital tax rate were 0.225%.

A corporation's “unused surtax credits” for the purposes of Part I.3 are defined in subsections 181.1(6) as, generally, the excess of its federal income surtax for a taxation year over its federal capital tax for the year, but for the deductions provided under subsection 181.1(4) of the Act. These excess credits are deductible under subsection 181.1(4) against its Part I.3 tax payable for the corporation's 3 preceding and 7 following taxation years. New subsection 181.1(1.2) ensures that a corporation will continue to compute its “unused surtax credits” as if the federal capital tax rate were still 0.225%. It also ensures that the same restriction applies in respect of the definition “unused surtax credits” in subsection 190.1(5), which is defined by reference to the definition in subsection 181.1(6) and applies for the purposes of deductions against the financial institutions capital tax in Part VI of the Act.

New subsection 181.1(1.2) applies to the 2004 and subsequent taxation years.

Clause 86

Capital Deduction

ITA
181.5(1) to (3)

Section 181.5 of the Act sets out rules for determining the capital deduction of a corporation for a taxation year.

Existing subsection 181.5(1) of the Act provides that the capital deduction of a corporation for a taxation year is $10 million, unless the corporation is related to other corporations at any time in the year, in which case its capital deduction is, subject to special rules governing allocations of the capital deduction, nil. This subsection is amended by increasing the amount of the capital deduction to $50 million. Subsections 181.5(2) and (3) of the Act, which set out the rules concerning the allocation of the capital deduction among

related corporations, are also amended to increase from $10 million to $50 million the amount of the capital deduction capable of being allocated.

The amendments to subsections 181.5(1) to (3) apply to the 2004 and subsequent taxation years.

ITA
181.5(1.1) and (4.1)

New subsections 181.5(1.1) and (4.1) ensure that the increase in the capital deduction does not apply in respect of subsection 125(5.1), the definitions "unused surtax credits" in subsection 181.1(6) and 190.1(5), and the definition "large corporation" in subsection 225.1(8) of the Act. See commentary on new subsection 181.1(1.2) of the Act for additional information on the first three of these provisions. Subsection 225.1(8) defines a "large corporation" as, generally, a corporation in respect of which a tax is payable, or would be payable but for subsection 181.1(4), under subsection 181.1(1), or a corporation that is related to such a corporation. "Large corporations" are subject to special rules under subsections 165(1.11) and 225.1(7) of the Act concerning, respectively, objections to assessments and collection restrictions. Subsection 125(5.1), the definitions "unused surtax credits" in subsection 181.1(6) and 190.1(5), and the definition "large corporation" in subsection 225.1(8) will continue to apply as if the capital deduction of a corporation under subsection 181.5(1) were still $10 million. In the case of related corporations, these provisions will apply as though the capital deduction of a corporation for a taxation year under subsection 181.5(2) or (3), as the case may be, were that proportion of $10 million that the capital deduction of the corporation otherwise determined for the year is of $50 million.

Example

Corporation A and Corporation B are both Canadian-controlled private corporations and are associated throughout a particular taxation year in the phase-out period. Corporation A and Corporation B have $5 million and $10 million, respectively, in taxable capital employed in Canada for the year. Neither corporation pays tax under Part I.3 for the year because both claim a $25 million capital deduction. However, for the purposes

of applying subsection 125(5.1), Corporation A and Corporation B would determine their Part I.3 taxes payable under subsection 181.1(1) as if both had a capital deduction of $5 million (i.e. $10 million x $25 million/$50 million). As a result, Corporation B would notionally be subject to a tax under subsection 181.1(1) for the purposes of applying subsection 125(5.1).

New subsections 181.5(1.1) and (4.1) apply to the 2004 and subsequent taxation years.

Clause 87

Tax Shelter Identification

ITA
237.1

Promoters of tax shelter properties are not permitted to sell a tax shelter without first obtaining an identification number from the Canada Customs and Revenue Agency (CCRA). The CCRA uses this identification number for administrative purposes such as identifying tax shelters for audit.

If an identification number is not obtained in advance, no person may claim any deduction in respect of the tax shelter until the number is obtained and a penalty is paid by the promoter.

Generally, a tax shelter is any property in respect of which it is represented that a potential purchaser will be able to claim, within four years, deductions from income or taxable income which equal or exceed the net cost of the property to the purchaser (that is, net of certain prescribed benefits such as limited-recourse debt).

The definition "tax shelter" in subsection 237.1(1) of the Act is amended to apply to property (including property acquired under a gifting arrangement) in respect of which it is represented that acquisition of the property (or the acquisition and donation or contribution of the property under a gifting arrangement) would generate any combination of tax credits or deductions that in total would equal or exceed the cost of acquiring the property (net of any prescribed benefits, described below).

Subsection 237.1(1) is further amended to add the definition "gifting arrangement". A "gifting arrangement" includes an arrangement under which it may reasonably be expected, having regard to representations made, that property acquired by a person under the arrangement will be the subject of a gift to a qualified donee or of a political contribution.

A "gifting arrangement" also includes an arrangement under which it may reasonably be expected, having regard to representations made, that if a taxpayer makes a gift or contribution under the arrangement, a person (whether or not it is the taxpayer) will incur an indebtedness in respect of which recourse is limited. The definition of "tax shelter" is amended to always include such a gifting arrangement as a tax shelter.

As described above, for the purpose of determining whether a property is a tax shelter, benefits prescribed under section 231 of the *Income Tax Regulations* are deducted from the cost of the property to a purchaser. Such benefits are generally to be received or enjoyed by the purchaser or a person with whom the purchaser does not deal at arm's length. They include tax credits, revenue guarantees, contingent liabilities, limited recourse debt and rights of exchange or conversion. In this regard, it is proposed that paragraph 231(1)(*b*) of the *Income Tax Regulations* be amended to exclude any federal tax credit already taken into account in the definition of "tax shelter" in determining whether tax credits and deductions exceed net cost. Provincial tax credits, which are not taken into account in that definition, would continue to be considered prescribed benefits.

These amendments generally apply to gifts, political contributions and representations made, and property acquired, after February 18, 2003.

Clause 88

Interpretation

ITA
248

Section 248 of the Act defines a number of terms that apply for the purposes of the Act, and sets out various rules related to the interpretation and application of various provisions of the Act.

Definitions

ITA
248(1)

"automobile"

For the purposes of the Act, "automobile" means a motor vehicle designed primarily to carry individuals on highways and streets and having a seating capacity of not more than nine people (including the driver) and a motor vehicle that is a station wagon or van if it is equipped to carry more than the driver and two passengers but not more than the driver and eight passengers. Vehicles such as an ambulance and a bus used in the business of transporting passengers are excluded from the definition.

The definition "automobile" is relevant to the limitation on the depreciable cost of a passenger vehicle, the equivalent restrictions on deductible lease payments in respect of leased passenger vehicles, and the limitation on the deductibility of interest expenses with respect to passenger vehicles. This definition is also relevant for the purpose of calculating employment-related benefits such as the automobile operating expense benefit and the reasonable standby charge.

The definition "automobile" is amended to exclude pick-up trucks used primarily for the transportation of goods, equipment or passengers in the course of earning or producing income at one or more remote or special worksites that are at least 30 kilometres from the nearest urban community having a population of at least 40,000 persons. This amendment applies to taxation years beginning after 2002.

The definition of "automobile" is further amended to exclude clearly marked emergency-response vehicles used in connection with, or in the course of, an individual's office or employment with a fire department or the police. This amendment applies to the 2003 and subsequent taxation years.

"limited-recourse amount"

After February 18, 2003, "limited-recourse amount" has the meaning assigned for the purposes of section 143.2 of the Act.

Clause 89

Extended Meaning of "spouse" and "former spouse"

ITA
252(3)

Subsection 252(3) of the Act provides an extended definition of the terms "spouse" and "former spouse" to include a party to a voidable or void marriage for certain specified purposes of the Act.

Subsection 252(3) is amended to replace the reference to paragraph 146.3(14)(*b*) with a reference to subsection 146.3(14). This amendment is strictly consequential on a restructuring of subsection 146.3(14). It is also amended to add a reference to subsection 147(19), which contains rules relating to the transfer of funds from a deferred profit sharing plan.

These amendments apply after 2003.

Clause 90

Children's Special Allowances – Calculation of Amount

CSA
8

Children's Special Allowances (CSA's) are tax-free monthly payments to help federal or provincial departments, childcare agencies, or institutions with the care and education of children who are under 18 years of age and who physically reside in Canada. Section 8 of the *Children's Special Allowances Act* describes the amount of special allowances to be paid in respect of a child for each month.

The CSA provides benefits parallel to the Canada Child Tax Benefit (CCTB) described in subsection 122.61(1) of the *Income Tax Act*. That subsection is amended to introduce a $1,600 Child Disability Benefit (CDB). The CDB is a supplement of the CCTB, and will be paid for each eligible child who meets the eligibility criteria for the disability tax credit.

Subsection 8(1) of the *Children's Special Allowances Act* is amended, consequential to the changes to subsection 122.61(1) of the *Income Tax Act*, to provide a parallel benefit for children covered by the *Children's Special Allowances Act.*

This amendment applies with respect to special allowances payable for months that are after June 2003.

Amendments Related to Standardized Accounting

Clause 91

Amounts of $2 or Less

Excise Act, 2001
165

Section 165 of the *Excise Act, 2001* provides that, if the total amount owing by a person or payable by the Minister of National Revenue does not exceed an amount prescribed by regulations, the amount owing is deemed to be nil. The prescribed amount is two dollars.

Section 165 is amended to replace the reference to a prescribed amount with a reference to the amount of $2, for consistency with other tax statutes, such as the *Excise Tax Act* and the *Income Tax Act*.

This amendment comes into force on the earlier of the day on which Parts 3 and 4 of the *Excise Act, 2001* come into force and the day on which the *Budget Implementation Act, 2003* is assented to.

Clause 92

Interest

Excise Act, 2001
170

Subsections 170(3) to (5) of the *Excise Act, 2001* provide that the Minister of National Revenue may serve notice that, if payment of an amount owing by a person is made by a given future date, interest from the date of notice to the date of payment will not be payable. Under certain circumstances, the Minister may also write off interest of less than an amount prescribed by regulation. The prescribed amount is twenty-five dollars.

The amendment restructures, and updates the wording of, the existing subsections and replaces the reference to the prescribed amount with a reference to the amount of $25, for consistency with other tax statutes, such as the *Excise Tax Act* and the *Income Tax Act*.

This amendment comes into force on the earlier of the day on which Parts 3 and 4 of the *Excise Act, 2001* come into force and the day on which the *Budget Implementation Act, 2003* is assented to.

Clause 93

Compound Interest

Excise Act, 2001
171

Section 171 of the *Excise Act, 2001* imposes interest on amounts owed by Her Majesty to a person. Interest is compounded daily at the prescribed rate from the day following that on which the amount was required to be paid by the Minister until the day the amount is paid or is applied against an amount owed by the person to Her Majesty.

The amendment updates the wording of the existing section for consistency with other provisions under the Act and other tax statutes, such as the *Excise Tax Act* and the *Income Tax Act*. Also, the amendment clarifies that, while section 171 establishes the general rule with respect to the calculation of interest, other provisions under the *Excise Act, 2001* may override this provision.

This amendment comes into force on the earlier of the day on which Parts 3 and 4 of the *Excise Act, 2001* come into force and the day on which *the Budget Implementation Act, 2003* is assented to.

Clause 94

Penalty for Default

ETA
7(1)

Subsection 7(1) of the *Excise Tax Act* imposes a penalty for failing to file a return, as well as interest for neglecting to pay some or all of the insurance premiums tax imposed under section 4 of the Act.

The amendment to subsection 7(1) removes the imposition of interest on unpaid amounts from the ambit of the subsection. This amendment is consequential to the introduction of interest rules under new section 79.03 that apply for purposes of the Act other than Part IX.

This amendment applies in respect of any period in which a return under Part I of the Act is required to be filed after June 2003.

Clause 95

Definitions "Fiscal Month" and "Month"

ETA
58.1(1)

Subsection 58.1(1) contains definitions of terms used in Part VII of the *Excise Tax Act*.

Subsection 58.1(1) is amended by adding the definitions "month" and "fiscal month", which are relevant for the purposes of determining reporting periods, filing-due dates and payment-due dates under amended sections 78 and 79 of the Act. A "month" may be a calendar month or a similar period overlapping two consecutive calendar months, such as a period beginning on the 15th day of a calendar month and ending on the 14th day of the following calendar month. A "fiscal month" is the period determined under amended subsection 78(1) of the Act.

This amendment comes into force on July 1, 2003.

Clause 96

Regulations

ETA
59

Existing section 59 provides that the Minister of Finance or the Minister of National Revenue may make regulations for the purposes of the Act, other than Part IX thereof.

New subsection 59(3.4) is added to provide that a regulation has effect from the day it is published in the *Canada Gazette* or at any later time that may be specified in the regulation. A regulation may also have an earlier effective date if the regulation has a relieving effect only, corrects an ambiguous or deficient enactment that was not in accordance with the objects of the Act, is consequential to an amendment to the Act that is applicable before the day on which the regulation is published in the *Canada Gazette* or gives effect to a budgetary or other public announcement.

This amendment comes into force on Royal Assent.

Clause 97

Rebate

ETA
68.5

Section 68.5 provides for a rebate in respect of fuel for certain tugs, ferries and passenger ships.

Subclause 97(1)

Effect of Extension for Filing

ETA
68.5(7)

Existing subsection 68.5(7) specifies that, if the Minister of National Revenue extends the time required for filing a reconciliation report, the report shall be filed within the extended time, and the payment shall include any required amount of excess rebate as well as any interest and penalty calculated on the basis that the person has until the expiry of the period so extended to file the reconciliation report.

The amendment repeals paragraph 68.5(7)(*c*) relating to the calculation of interest and penalty and is consequential to the introduction of interest rules under new section 79.03, which apply for the purposes of the Act other than Part IX.

This amendment applies in respect of rebate periods ending after June 2003.

Subclause 97(2)

Liability for Excess Rebate and Interest

ETA
68.5(9)(*b*)

Existing paragraph 68.5(9)(*b*) provides that a person who has received an excess rebate and who must pay back the excess is also liable to pay interest on the amount of the excess, calculated in respect of each month or fraction of a month the excess amount remains unpaid.

The amendment to paragraph 68.5(9)(*b*) removes all references to interest compounded monthly and provides, in conjunction with new section 79.03 of the Act, that interest is to be compounded on a daily basis.

This amendment applies in respect of amounts owing after June 2003.

Subclause 97(3)

Interest and Penalty

ETA
68.5(11) to (13)

Subsections 68.5(11) to (13) provide the rules applicable to interest and penalty payable on an amount in respect of an excess rebate received by a person, which is deemed under subsection 68.5(10) to be tax payable by the person.

The amendment repeals subsections 68.5(11) to (13) and is consequential to the introduction of interest rules under new section 79.03 that apply for purposes of the Act other than Part IX.

This amendment applies in respect of amounts owing after June 2003.

Subclause 97(4)

Restriction

ETA
68.5(14)(*b*)

Paragraph 68.5(14)(*b*) provides that the Minister of National Revenue shall not pay a rebate under section 68.5 to a person unless and until the person pays all outstanding amounts of excess rebates, interest and penalty owing by the person under the section.

The amendment to paragraph 68.5 (14)(*b*) removes the reference in that paragraph to "penalty". This amendment is consequential to the introduction of interest rules in new section 79.03 that apply for purposes of the Act other than Part IX.

This amendment applies in respect of amounts owing after June 2003.

Clause 98

Interest on Rebates under Part VII

ETA
72(7) and (8)

Subsection 72(7) provides that interest, compounded monthly, starts to accrue sixty days after an application for a rebate under any of sections 68 to 69 is received by the Minister of National Revenue and subsection 72(8) provides that no interest of less than $1 is payable.

Subsection 72(7) is amended to provide that interest, compounded daily under new section 79.04 of the Act, is payable for the period beginning on the day that is 30 days after the day on which the application is filed with the Minister and ending on the day on which the amount is paid. The amendment also repeals the rule in respect of interest of less than $1 found in subsection 72(8). However, a rule in respect of small amounts is added under new section 79.02, which applies for purposes of the Act other than Part IX.

This amendment applies in respect of applications received by the Minister after June 2003.

Clause 99

Interest on Deduction

ETA
74(3) and (4)

Existing subsection 74(3) provides that interest, compounded monthly, starts to accrue sixty days after an application for a rebate under any of sections 68 to 68.11 or 68.17 to 69 is received by the Minister of National Revenue and ends on the day on which the notice of determination in respect of the rebate is sent. Subsection 74(4) provides that no interest of less than $1 is payable.

Amended subsection 74(3) provides that interest, compounded daily under new section 79.04 of the Act, is payable for the period beginning on the day that is 30 days after the day on which the

application is filed with the Minister and ending on the day on which the notice of determination is sent. The amendment also repeals the rule in respect of interest of less than $1, which is found in existing subsection 74(4). However, a rule in respect of small amounts is added under new section 79.02, which applies for purposes of the Act other than Part IX.

This amendment applies in respect of applications received by the Minister after June 2003.

Clause 100

Returns and Payment of Excise Tax

ETA
78 to 79.05

Section 78 – Fiscal Month

Section 78 sets out the rules for making returns and for the payment of tax under Parts III and IV of the Act, which relate to excise taxes on fuel and other specified goods.

Subsection 78(1) is replaced to provide the rules for determining "fiscal months" for the purpose of making returns and the payment of tax. A "fiscal month" of a person is the fiscal month determined for the purposes of the goods and services tax or harmonized sales tax (GST/HST) under subsection 243(2) or (4) if that determination has been made for that person. If fiscal months have not been determined for purposes of the GST/HST for that person, the person may select fiscal months that meet the requirement for GST/HST purposes. In any other case, the fiscal month of a person is the calendar month. Subsection 78(2) is replaced to provide that every person shall notify the Minister of their fiscal months.

This amendment comes into force on July 1, 2003.

Section 79 – Returns and Payments

Section 79 imposes penalty and interest in the case of a default in paying taxes, specifying how and when the amounts are to be paid.

Subsection 79(1) is replaced to provide that every person who has to pay tax under Part III or IV of the Act and every person who holds a licence granted under or in respect of Part III or IV shall, not later than the last day of the first month after each fiscal month of the person, file with the Minister the return for that fiscal month and pay that amount to the Receiver General.

Amended subsection 79(2) authorizes the Minister to extend the reporting period of a person. In that case, amended subsection 79(3) provides that the person shall, not later than the last day of the first month after the end of the period so extended, file a return and pay tax in respect of the extended period.

This amendment comes into force on July 1, 2003.

Section 79.01 – Transition

New section 79.01 provides transitional rules for determining the reporting period of a person and hence the person's obligation to make returns and pay tax in the case where the accounting period of the person that would include July 1, 2003 if section 78 were not amended begins before that date. That period is referred to as the "pre-existing accounting period".

In this case, the person shall file a return and pay any amounts owing in respect of the pre-existing accounting period in the same manner and at the same time as the person would be required to do so if section 78 were not amended. Also, that portion of the person's fiscal month in which the pre-existing accounting period ends that is not included in that accounting period is deemed to be part of the person's next fiscal month. That next fiscal month may therefore end up exceeding the normal 35 days in length.

For example, assume a person was authorized by the Minister to make a return in respect of the accounting period from June 8, 2003 to July 7, 2003. Since this period includes July 1, 2003, it constitutes the person's "pre-existing accounting period". Assume as well that the person is registered for the purposes of the GST and that the person's fiscal month, determined under subsection 243(2), that includes the last day of the person's pre-existing accounting period (i.e., July 7, 2003) is the period from June 15, 2003 to July 14, 2003. The person's

next fiscal month is therefore the period from July 15, 2003 to August 14, 2003.

In this case, the person would have to file a return and pay any amount owing in respect of the pre-existing accounting period ending on July 7, 2003 in the same manner and at the same time as if the amendments in relation to reporting periods were not made. Also, the period beginning July 8, 2003 and ending July 14, 2003 would be deemed to be part of the next fiscal month of the person ending August 14, 2003.

This amendment comes into force on July 1, 2003.

<u>Section 79.02</u> – Amounts of $2 or Less

New subsection 79.02(1) provides that if, at any time, the total of all amounts owing by a person to Her Majesty under the Act other than Part IX does not exceed $2, those amounts are deemed to be nil. New subsection 79.02(2) provides that, if the total of all amounts payable by the Minister of National Revenue to a person does not exceed $2 at any time, the Minister shall apply those amounts against any amount owing, at that time, by the person to Her Majesty. However, if at that time the person does not owe any amount to Her Majesty, those amounts payable by the Minister are deemed to be nil.

This amendment applies in respect of amounts owing by a person to Her Majesty, or amounts payable by the Minister, after June 2003.

<u>Section 79.03</u> – Interest

New subsection 79.03(1) provides that the interest on an amount a person fails to pay to the Receiver General as and when required under the Act other than Part IX thereof is compounded daily and accrues starting on the first day after the day on which the amount is required to be paid until the day on which the amount is paid.

New subsection 79.03(2) provides that interest on an unpaid amount that is compounded on a particular day is required to be paid to the Receiver General at the end of that day. If the person has not paid the interest so computed by the end of the following day, that interest shall be added to the unpaid amount that was outstanding at the end of the particular day.

New subsection 79.03(3) provides that, when the Minister notifies a person of an amount payable and the person pays that amount in full within the period that the Minister specifies in the notice, interest is not payable for the period.

New subsection 79.03(4) provides that, if the total amount of interest payable on a specific amount is not more than $25 at the time the person pays the specific amount in full, the Minister may cancel the interest.

New section 79.03 applies in respect of amounts owing by a person to Her Majesty after June 2003.

<u>Section 79.04</u> – Compound Interest

New section 79.04 provides that, unless the Act provides otherwise, interest compounded daily on amounts owed by Her Majesty starts to accrue on the first day after the day the amount is required to be paid until the day on which the amount is paid or applied against an amount owed by the person to Her Majesty.

New section 79.04 applies in respect of amounts payable by the Minister after June 2003.

<u>Section 79.05</u> – Application of Interest Provisions if Act Amended

New section 79.05 provides that, if a legislative amendment is proposed and that amendment is to come into force on, or applies as of, a day before it receives Royal Assent, interest will be calculated with respect to the amendment as though it had been assented to on that earlier day.

New section 79.05 comes into force on Royal Assent.

Clause 101

Instalment Payments of Excise Tax

ETA
79.1

Section 79.1 provides for instalment payments to be made in certain circumstances in respect of tax under Part III or IV of the Act.

Subclause 101(1)

Instalment Base

ETA
79.1(1)(*a*)

Subsection 79.1(1) defines a person's “instalment base”, which is used to calculate the person's instalment requirement for a period to which a return in respect of tax under Part III or IV of the Act relates.

Paragraph 79.1(1)(*a*) is amended to define “instalment base” with reference to a “fiscal month,” defined in amended subsection 78(1), rather than with reference to a “month.” Also, the reference to “accounting period” is replaced with a reference to “period”. These amendments are consequential to the amendments to sections 78 and 79 relating to filing and payment requirements.

This amendment applies to fiscal months that begin after June 2003.

Subclause 101(2)

Large Taxpayers

ETA
79.1(1)(*b*)

Paragraph 79.1(1)(*b*) defines the term “large taxpayer” for the purposes of the requirement to make instalment payments in respect of tax under Part III or IV of the Act.

The paragraph is amended to remove the references to the repealed Parts of the Act. In addition, clause 79.1(1)(*b*)(ii)(B) is amended by replacing the existing references to paragraphs 78(3)(*b*) and (*c*) with a reference to subsection 79(2), which is amended to deal with the matters under those existing paragraphs.

This amendment comes into force on July 1, 2003.

Subclause 101(3)

Instalment Payments

ETA
79.1(2) to (8)

Subsections 79.1(2) and 79.1(3) describe how and when instalment payments in respect of tax under Part III or IV of the Act are to be made. Subsections 79.1(4) to (8) deal with the payment of penalty and interest that may be incurred in connection with the payment of instalments.

The amendment updates cross-references and references to "fiscal month" consequential to the amendments to sections 78 and 79. The amendment also repeals subsections 79.1(4) to (8) consequential to the introduction of interest rules under new section 79.03 that apply for purposes of the Act other than Part IX.

This amendment comes into force on July 1, 2003.

Clause 102

Returns and Payments

ETA
79.2

Section 79.2 provides rules for the filing of returns and the payment or remittance of amounts imposed under Part III or IV of the Act.

The amendment removes the rule found in existing subsection 79.2(1) that requires that returns and payments be filed or made at prescribed locations of the Canada Customs and Revenue Agency.

Existing subsection 79.2(2) provides that, where the due date for the remittance of taxes under Part III or IV falls on a weekend or holiday, the due date is the day before the weekend or holiday. The amendment removes that rule. The application of the *Interpretation Act* will permit the remittance to be made on the first business day following the weekend or holiday.

The amendment comes into force on July 1, 2003.

Clause 103

Alternate Reporting

ETA
80(2)

Existing subsection 80(2) provides for an alternate form of reporting a person's sales, excise taxes paid and deductions under subsection 69(2).

The amendment updates cross-references and replaces the existing references to paragraphs 78(3)(*b*) and (*c*) with a reference to new section 79 of the Act, which sets out the rules for filing returns.

The amendment applies to fiscal months that begin after June 2003.

Clause 104

Interest on Reassessment

ETA
81.16(4) to (6)

Subsections 81.16(4) and (5) specify that interest on the amount paid by the Minister of National Revenue to refund an overpayment made by a person is to be compounded monthly on the total amount of the

payment to that person and interest outstanding. Subsection 81.16(6) provides that no interest of less than $1 is payable.

The amendment removes the stipulation that the interest is to be compounded monthly and that only interest of $1 or more is payable. Rules for computation and payment of interest are set out in new section 79.04 and a rule in respect of small amounts is added under new section 79.02. These rules apply for purposes of the Act other than Part IX thereof.

This amendment applies to amounts payable by the Minister after June 2003.

Clause 105

Interest on Payments by the Minister

ETA
81.18(3) to (5)

Existing subsections 81.18(3) and (4) provide that interest, compounded monthly, starts to accrue sixty days after the Minister of National Revenue receives an application for a reconsideration of a determination on an objection that results in an amount payable to the person objecting. Subsection 81.18(5) provides that no interest of less than $1 is payable.

The amendments to subsections 81.18(3) and (4) provide that interest, compounded daily under new section 79.04, is payable for the period beginning on the day that is thirty days after the day on which the application is received by the Minister and ending on the day on which the amount is paid or a notice of decision is sent. The amendment also repeals the rule in existing subsection 81.18(5) in respect of interest of less than one dollar. However, a rule in respect of small amounts is added under new section 79.02 that applies for purposes of the Act other than Part IX.

This amendment applies to amounts payable by the Minister after June 2003.

Clause 106

Interest on Assessment

ETA
81.38(6) to (9)

Subsections 81.38(6) and (7) provide for the payment of interest compounded monthly on amounts that become payable by the Minister of National Revenue as a result of an appeal of an assessment or determination made by the Minister respecting an application made under any of sections 68 to 69 (e.g., an application for a rebate of excise tax paid in error). Subsection 81.38(8) provides that interest, compounded monthly, starts to accrue sixty days after an application is received by the Minister. Subsection 81.38(9) provides that no interest of less than one dollar is payable.

The amendment removes all references to interest compounded monthly in subsections 81.38(6) and (7) and provides, in conjunction with new section 79.04, that interest is to be compounded on a daily basis. The amendment also provides in subsection 81.38(8) that interest is to be compounded daily under new section 79.04 on an amount payable by the Minister in respect of an application made under any of sections 68 to 69. The interest is payable for the period beginning on the day that is 30 days after the day on which the application is received by the Minister. Finally, the amendment repeals the rule in subsection 81.38(9) in respect of interest of less than one dollar. However, a rule in respect of small amounts is added under new section 79.02, which applies for purposes of the Act other than Part IX.

This amendment applies to amounts payable by the Minister after June 2003.

Clause 107

Overpayments by Minister

ETA
81.39

Section 81.39 deems overpayments received by a person to be tax payable and provides rules regarding interest and penalty on that tax. Subsections 81.39(1) to (4) require payment of that tax before the last day of the first month following the month in which the overpayment is made. Subsections 81.39(5) to (10) provide how penalty and interest on such tax are to be paid.

The amendment provides that such tax is payable on the day the overpayment is made. The amendment repeals subsections 81.39(5) to (10) consequential to the introduction of interest rules under new section 79.03 that apply for purposes of the Act other than Part IX. The amendment also updates a number of cross-references.

This amendment applies to amounts paid to a person after June 2003.

Clause 108

Garnishment

ETA
84(5) to (9)

Subsections 84(5) and (6) impose penalty and interest for non-compliance with a notice served by the Minister of National Revenue.

The amendment removes all references to interest and penalty consequential to the introduction of interest rules in new section 79.03 that apply for purposes of the Act other than Part IX. The amendment also updates a number of cross-references.

This amendment applies to amounts payable by a person after June 2003.

Clause 109

Waiver of Interest or Penalty

ETA
88

Section 88 allows the Minister of National Revenue to waive or cancel interest, as well as any penalty calculated in the same manner as interest.

The amendment provides, more broadly, that the Minister may waive or cancel any interest or any penalty. New subsection 88(2) provides that, if a person has paid interest or penalty and the Minister cancels the amount of interest or penalty under subsection 88(1), the Minister shall pay interest on that amount beginning thirty days after the day on which the Minister received the request for the waiver or cancellation and ending on the day on which the amount is paid or applied against an amount owed by the person to Her Majesty.

This amendment applies in respect of requests received by the Minister after June 2003.

Clause 110

Incorrect Statements

ETA
116(4)(*a*) and (*b*)

Subsection 116(4) specifies which person is liable to pay tax under Part III or IV of the Act in respect of goods and any related penalty and interest in situations where an incorrect statement is made regarding the use of the goods by the purchaser. The amendment updates cross-references in respect of the imposition of interest consequential to the introduction of interest rules under new section 79.03 that apply for purposes of the Act other than Part IX.

This amendment applies in respect of amounts owing by a person after June 2003.

Clause 111

Private Corporations

ITA
129

Section 129 of the *Income Tax Act* provides the mechanism under which a portion of the taxes paid by a private corporation in respect of its investment income (the portion referred to as “refundable dividend tax on hand” or “RDTOH”) is refundable to the corporation when dividends are paid to its shareholders.

Interest on dividend refund

ITA
129(2.1)

Subsection 129(2.1) provides that the Minister of National Revenue is to pay interest on dividend refunds. The period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the taxation year to which the dividend refund relates, and the day on which the corporation's income tax return for that year is filed. The period ends on the day on which the dividend refund is paid to the corporation or applied to another liability of the corporation.

Subsection 129(2.1) is amended to provide that the period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the taxation year to which the dividend refund relates, and 30 days after the day on which the corporation's income tax return for that year is filed.

This amendment applies to taxation years that end after June 2003.

Clause 112

Mutual Fund Corporations

ITA
131

Section 131 of the Act sets out rules relating to the taxation of mutual fund corporations and their shareholders. Although the taxable capital gains of a mutual fund corporation are subject to the full corporate tax rate, a mutual fund corporation may receive a refund of this tax (referred to as "refundable capital gains tax on hand") in the form of a "capital gains refund" for the taxation year when the taxable capital gains are distributed to its shareholders in the form of "capital gains dividends".

Interest on capital gains refund

ITA
131(3.1)

Subsection 131(3.1) provides that the Minister of National Revenue is to pay interest on capital gains refunds. The period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the taxation year to which the capital gains refund relates and the day on which the corporation's income tax return for that year is filed. The period ends on the day on which the capital gains refund is paid to the mutual fund or applied to another of its liabilities.

Subsection 131(3.1) is amended to provide that the period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the taxation year to which the capital gains refund relates, and 30 days after the day on which the corporation's income tax return for that year is filed.

This amendment applies to taxation years that end after June 2003.

Clause 113

Mutual Fund Trusts

ITA
132

The taxable capital gains of a mutual fund trust are subject to federal income tax at a rate of 29 per cent. This tax (referred to as "refundable capital gains tax on hand") is refunded to the trust as the trust's unitholders redeem their interests in the trust. The tax refunded in this manner is referred to as the trust's "capital gains refund" for the year.

Interest on capital gains refund

ITA
132(2.1)

Subsection 132(2.1) provides that the Minister of National Revenue is to pay interest on capital gains refunds. The period in respect of which interest is payable starts on the later of the day that is 135 days after the end of the year to which the capital gains refund relates and the day that is 45 days after the trust's income tax return for the year is filed. The period ends on the day on which the capital gains refund is paid to the mutual fund or applied to another of its liabilities.

Subsection 132(2.1) is amended to provide that the period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the taxation year to which the capital gains refund relates and the day that is 30 days after the trust's income tax return for the year is filed.

This amendment applies to taxation years that end after June 2003.

Clause 114

Non-resident-owned Investment Corporations

ITA
133

Section 133 of the Act sets out special rules relating to the taxation of non-resident-owned investment corporations (NROs). A NRO is subject to a 25% rate of tax which approximates that which would have been payable if its non-resident shareholders had invested in Canada directly rather than through the corporation. The portion of this tax paid on its taxable income other than capital gains (its "allowable refundable tax on hand") is, however, refundable to the corporation upon payment of taxable dividends to its shareholders. The tax that is so refunded, or that is applied to another liability of the corporation, is called the corporation's "allowable refund".

Interest on allowable refund

ITA
133(7.01)

Subsection 133(7.01) provides that the Minister of National Revenue is to pay interest on allowable refunds. The period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the year to which the allowable refund relates and the day on which the corporation's income tax return for that year is filed. The period ends on the day on which the allowable refund is paid to the corporation or applied to another liability of the corporation.

Subsection 133(7.01) is amended to provide that the period in respect of which interest is payable starts on the later of the day that is 120 days after the end of the taxation year to which the allowable refund relates and 30 days after the day on which the corporation's income tax return for that year is filed.

This amendment applies to taxation years that end after June 2003.

Clause 115

Payment by Corporations

ITA
157

Section 157 of the Act sets out dates on or before which a corporation is required to pay amounts on account of its taxes payable under Parts I, I.3, VI, VI.1, and XIII.1 of the Act.

Special case [co-op or credit union]

ITA
157(2)

Subsection 157(2) sets out conditions under which a co-operative corporation or a credit union is permitted to make only one payment of the whole of its tax payable for a taxation year, rather than having to make instalments.

Subsection 157(2) is repealed. A co-operative corporation or a credit union will now be subject to the same instalment rules as other corporations.

The repeal of subsection 157(2) applies to taxation years that begin after June 2003.

Clause 116

Interest

ITA
161

Section 161 of the Act provides for the payment of interest on outstanding amounts of tax payable under Part I, as well as on late or deficient instalments in respect of such tax.

Interest on instalments - exception

ITA
161(2.1)

Subsection 161(2) provides that a taxpayer is liable to pay interest on unpaid instalments of taxes under Part I. Subsection 161(2.1) eliminates the obligation to pay interest where the interest liability in respect of both the federal and provincial instalment payments for the year is $25 or less.

Subsection 161(2.1) is repealed and replaced by new section 161.3. For additional commentary see new section 161.3.

The repeal of subsection 161(2.1) applies to taxation years that end after June 2003.

Effect of carryback of loss, etc.

ITA
161(7)(*b*)

Subsection 161(7) provides that, where the amount of tax payable for a taxation year is reduced because of certain deductions or exclusions arising from the carryback of losses or tax credits or from events in subsequent years, interest on any unpaid tax for the taxation year is calculated without regard to the reduction until the latest of several dates.

Paragraph 161(7)(*b*) is amended to provide that, where the amount of tax payable for a taxation year is reduced because of certain deductions or exclusions arising from the carryback of losses or tax credits or from events in subsequent years, interest on any unpaid tax for the taxation year is calculated without regard to the reduction until 30 days after the latest of those dates.

This amendment applies to applications received after June 2003.

Clause 117

Where Interest Not Payable

ITA
161.2

New section 161.2 of the Act is consistent with current administrative practice. It provides that when the Minister of National Revenue notifies a taxpayer that a specific amount is payable under the Act and the taxpayer pays that amount in full within the period that the Minister specifies with the notice, interest is not payable on that amount for the period. However, if the taxpayer does not pay the specified amount in full before the end of that period, interest is payable in respect of the period.

This amendment comes into force on July 1, 2003.

Interest and penalty amounts of $25 or less

ITA
161.3

Currently, subsection 161(2.1) provides that where the interest liability in respect of both the federal and provincial instalment payments for a taxation year is $25 or less, the Minister shall not assess such interest.

Subsection 161(2.1) is repealed. However, new section 161.3 provides that if the person pays an amount that is not less than the total of all amounts other than interest and penalty owing at that time in respect of a taxation year, and the total of interest and penalty payable by the person under this Act for that year is not more than $25, the Minister may cancel the interest and penalty owed.

This amendment applies to taxation years that end after June 2003.

Small amounts

ITA
161.4

New subsection 161.4(1) provides that if, at any time, the total of all amounts owing by a person to Her Majesty in Right of Canada under the Act does not exceed $2, those amounts owing by the person are deemed to be nil.

New subsection 161.4(2) provides that if the total of all amounts payable by the Minister to a person under this Act at any time does not exceed $2, the Minister shall apply those amounts against any amount owing, at that time, by the person to Her Majesty in Right of Canada. However, if at that time the person does not owe any amount to Her Majesty in Right of Canada, those amounts payable by the Minister are deemed to be nil.

These amendments apply to amounts owing or payable, as the case may be, after June 2003.

Clause 118

Refunds

ITA
164

Section 164 of the Act contains rules relating to refunds of taxes, including provisions dealing with repayments, application to other debts, and interest.

Interest on refunds and repayments

ITA
164(3)

In the case of an individual, subsection 164(3) provides that no interest is paid on tax refunds for a taxation year until the later of 45 days after the individual's balance-due day for the year and 45 days after the day on which the individual's income tax return for the year

is filed. Subsection 164(3) is amended to provide that interest becomes payable on the day that is 30 days after the later of the individual's balance-due day for the year and the day on which the individual's return for the year is filed.

In the case of a corporation, subsection 164(3) provides that no interest is paid on tax refunds until the later of 120 days after end of the year, if the return is filed on or before the corporation's filing-due date for the year, and the day the return is filed. Subsection 164(3) is amended to provide no interest is paid on tax refunds until the later of 120 days after end of the year, if the return is filed on or before the corporation's filing-due date for the year, and 30 days after the day the return is filed.

See the commentary on new section 161.4 for additional comments relating to the payment of small amounts owing.

These amendments apply to taxation years that end after June 2003.

Interest where amount cancelled

ITA
164(3.2)

Subsection 164(3.2) provides that interest is to be paid on an overpayment of tax determined by reason of subsection 152(4.2) or 220(3.1) or (3.4) from the day that the Minister of National Revenue receives an acceptable request for an adjustment to the day the amount is refunded or applied, as the case may be.

Subsection 164(3.2) is amended to clarify that there is no specific form required under that measure.

Subsection 164(3.2) is further amended to provide that interest will be paid on an overpayment of tax determined under subsection 152(4.2) or 220(3.1) or (3.4) from the day that is 30 days after the day the Minister of National Revenue receives an acceptable request for an adjustment to the day the amount is refunded or applied, as the case may be.

These amendments apply to requests received by the Minister after June 2003.

Effect of carryback of loss, etc.

ITA
164(5)

Subsection 164(5) provides that, where the tax payable for a taxation year is reduced as a consequence of the carryback of a loss, tax credit or other amount from a subsequent taxation year, interest payable to a taxpayer on any resulting overpayment of tax is to be calculated as if the overpayment had arisen on the later of the day on which the tax return for the subsequent year is required to be filed and the day on which that return is actually filed.

Subsection 165(4) is amended to provide that no interest is payable until the end of a 30-day period after the later of those days.

This amendment applies to taxation years that end after June 2003.

Clause 119

Tax on Corporate Distributions

ITA
183.1

Part II.1 of the Act contains provisions to prevent the avoidance of normal tax on corporate distributions where a corporation effects a distribution of corporate surplus that would otherwise be taxable, directly or indirectly, to its shareholders in the form of proceeds of disposition that result in an exempt capital gain in the hands of individual shareholders. The measure takes the form of a special tax to be paid by the corporation that is intended to approximate the shareholder tax that would have been paid had the distribution been received as a dividend.

Tax payable

ITA
183.1(2)

Where subsection 183.1(2) is applicable in respect of an event that occurred in a taxation year, the tax is to be paid by the corporation on or before the day on which it is required to file its return of income under Part I for its taxation year.

Subsection 183.1(2) is amended to provide that the corporation shall pay, on or before its balance-due day for the taxation year, the tax under Part II.1 for the year.

This amendment applies to taxation years that begin after June 2003.

Clause 120

Tax on Taxable Dividends Received by Private Corporations

ITA
186

Part IV of the Act levies a refundable tax on dividends received by a private or closely-held corporation.

Tax on assessable dividends

ITA
186(1)

Where subsection 186(1) is applicable in respect of dividends received in a taxation year, the Part IV tax for the taxation year is to be paid by the corporation on or before the last day of the third month after the end of the year.

Subsection 186(1) is amended to provide that the corporation shall pay the tax under Part IV for a taxation year on or before its balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 121

Tax on Dividends on Taxable Preferred Shares

ITA
187.2

Part IV.1 of the Act provides for two special taxes to be paid by certain corporations on dividends received after 1987 on a taxable preferred share or a taxable restricted financial institution (RFI) share.

Section 187.2 provides that, if a corporation receives in a taxation year a dividend on a taxable preferred share, the corporation must pay a special 10% tax on the dividend on or before the last day of the second month following the end of the taxation year.

Section 187.2 is amended to provide that the corporation shall pay the special 10% tax on dividends received in a taxation year on or before its balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 122

Tax on Dividends on Taxable RFI Shares

ITA
187.3(1)

Subsection 187.3(1) provides that if in a taxation year an RFI receives a dividend on a taxable RFI share, the RFI shall pay a special 10% tax on the dividend on or before the last day of the second month following the end of that taxation year.

Section 187.3 is amended to provide that the RFI shall pay the special 10% tax on dividends received in a taxation year on or before its balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 123

Tax on Deduction under Section 66.5

ITA
196

Part IX of the Act imposes a 30% tax on the amount deducted under subsection 66.5(1) by every corporation in computing its income for each taxation year. These amounts represent Canadian exploration expense and Canadian development expense that had previously been applied to offset Petroleum and Gas Revenue Tax.

Instalments

ITA
196(3)(*b*)

Subsection 196(3) provides that the corporation shall pay the remainder of the taxes payable by it under Part IX for a taxation year, on or before the end of the second month following the end of the year.

Paragraph 196(3)(*b*) is amended to provide that the corporation shall pay the remainder of the taxes payable by it under Part IX for a taxation year on or before its balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 124

Labour-sponsored Venture Capital Corporations

ITA
204.86

Section 204.86 of the Act provides that every labour-sponsored venture capital corporation (LSVCC) (including revoked corporations) must file an annual return under Part X.3 of the Act.

Return and payment of tax for federally-registered LSVCCs

ITA
204.86(1)(*c*)

Paragraph 204.86(1)(*c*) provides that every registered LSVCC and every revoked corporation is required to pay the tax and penalty, if any, payable under Part X.3 for a taxation year within 90 days after the end of the taxation year.

Paragraph 204.86(1)(*c*) is amended to provide that such amounts payable in respect of a taxation year are payable on or before the LSVCC's balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Return and payment of tax for other LSVCCs

ITA
204.86(2)(*c*)

Paragraph 204.86(2)(c) provides that, where an LSVCC must file a return under Part X.3 for a taxation year because of subsection 204.82(5) or 204.85(2), the corporation is required to pay the tax under that part for the taxation year within 90 days after the end of the taxation year.

Paragraph 204.86(2)(*c*) is amended to provide that the corporation is required to pay the tax on or before its balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 125

Tax in Respect of Certain Royalties, Taxes, Leasing Rentals, etc., Paid to Government by a Tax-Exempt Person

ITA
208

Part XII of the Act imposes a tax on tax-exempt persons in respect of certain royalties and related payments paid to the Crown by the tax-exempt person.

Return and payment of tax

ITA
208(2)

Subsection 208(2) provides that the person who is liable to pay tax under Part XII in respect of a taxation year shall file a return under Part XII and pay the tax within 3 months from the end of the year.

Subsection 208(2) is amended to provide that the person who is liable to pay tax under Part XII in respect of a taxation year is required to file the return and pay that tax on or before the person's balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 126

Tax on Carved-out Income

ITA
209

Part XII.1 of the Act imposes a special tax at the rate of 50% on "carved-out income". In general terms, the purpose of this tax is to discourage the use of tax-exempt persons and loss corporations for the holding of profitable resource property in respect of which profitable persons retain a substantial economic interest.

Payment of tax

ITA
209(4)(*b*)

A person who is subject to tax under Part XII.1 for a taxation year is required to pay any remainder of the tax payable under Part XII.1 for the taxation year on or before the end of the second month following the end of the taxation year.

Paragraph 209(4)(*b*) is amended to provide that the person is required to pay any remainder of the tax payable under Part XII.1 for a year on or before its balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 127

Tax on Investment Income of Life Insurers

ITA
211.4

Part XII.3 of the Act imposes a tax on investment income of life insurers.

Section 211.4 provides that every life insurer shall pay the remainder of the tax payable under Part XII.3 by the insurer for a taxation year on or before the last day of the second month ending after the end of the taxation year.

Section 211.4 is amended to provide that every life insurer shall pay the remainder of the tax payable under Part XII.3 for a taxation year on or before its balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 128

Additional Tax on Non-Resident Corporations

ITA
219

Part XIV of the Act levies a tax, generally referred to as the "branch tax", on corporations (other than Canadian corporations) carrying on business in Canada.

Additional tax

ITA
219(1)

Subsection 219(1) provides that every corporation that is non-resident in a taxation year shall, on or before its filing-due date for the year, pay a tax under Part XIV for the year equal to 25% of the amount calculated under that subsection.

Subsection 219(1) is amended to provide that every corporation that is non-resident in a taxation year shall pay the tax under Part XIV for the year on or before its balance-due day for the taxation year.

This amendment applies to taxation years that begin after June 2003.

Clause 129

Administration and Enforcement

ITA
220

Section 220 of the Act sets out a number of rules relating to the administration and enforcement of the Act.

Extensions for returns

ITA
220(3)

Subsection 220(3) provides that the Minister may at any time extend the time for making a return under this Act.

Subsection 220(3) is amended to clarify that, while the penalty for making a late return will not be charged if the person files the return within the extended period the Minister has granted, the penalty for filing a late return will be charged from the regular filing-due date if the return is not filed within the period so extended.

This amendment applies to extensions granted after February 18, 2003.

Clause 130

Coordinating Amendments - Excise Tax Returns and Payment of Tax

This clause concerns provisions of the *Excise Tax Act* that are being amended by both the *Budget Implementation Act, 2003* and the *Excise Act, 2001*, which was enacted in 2002 but is not to come into force until a day to be fixed by order of the Governor in Council. This clause ensures that, whichever Act comes into force first, those provisions of the *Excise Tax Act* will be amended in the manner and as of the effective date provided for by the *Budget Implementation Act, 2003*.